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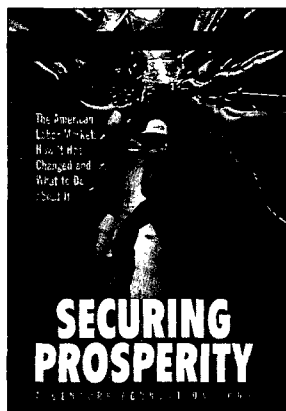
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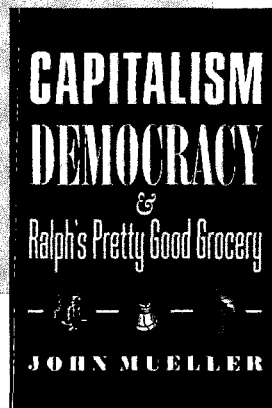


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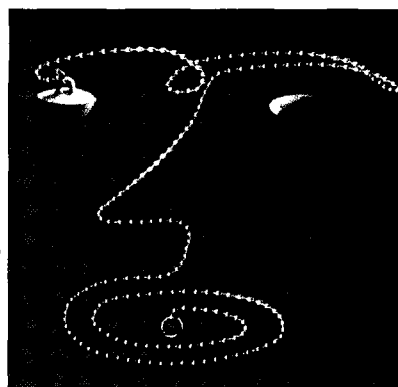
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COVER COLLAGE
BY JEFFREY KIBLER

Ruth Bader Ginsburg

Affirmative Action as an International Human Rights Dialogue

A 1995 United Nations report estimated that white Americans, if ranked as a separate nation, would lead the world in well-being, a measure that combines life expectancy, educational achievement, and income. African Americans, in contrast, would rank a depressing twenty-seventh, while Hispanic Americans would rank even lower at thirty-second. The authors of the UN report observed: “full equality still is a distant prospect in the United States, despite affirmative action policies and market opportunities.”

The words affirmative action do not appear in the 1948 Universal Declaration of Human Rights, the foundation document for contemporary human rights discourse. The declaration does, however, contain two intellectual anchors for affirmative action. First, the declaration repeatedly endorses the principle of human equality. Second, it declares that everyone has the right to work, to an adequate standard of living, and to education. The declaration does not command that all will share equally, but it does suggest strongly that there are minimum levels of employment, education, and subsistence that all should share. If a

Ruth Bader Ginsburg is Associate Justice of the U.S. Supreme Court. This article is drawn from the Cardozo Lecture given by Justice Ginsburg at the Association of the Bar of the City of New York on February 11, 1999. The full text of the lecture was co-authored by Justice Ginsburg's former student and law clerk, Deborah Jones Merritt, who now holds the John D. Drinko-Baker and Hostetler Chair at the Ohio State University College of Law.

nation finds that citizens of one race—or sex or religion—endure a markedly inadequate standard of living, then, the declaration suggests, it has an obligation to uncover the cause of, and respond to, that endurance.

If we take seriously the promises of employment, education, and sustenance made in the Universal Declaration of Human Rights, the discrepancies in racial well-being in the United States noted by the United Nations report demand affirmative government attention. It seems implausible that such marked differences would occur with no discrimination lurking in the background.

Affirmative action entered the U.S. legal lexicon in its contemporary connotation in 1961, although it did not shift into high gear until 1969, when President Richard Nixon's Labor Department issued its Revised Philadelphia Plan, requiring government contractors in that city to set goals and timetables for hiring minority workers in six construction trades. Contractors who failed to comply risked loss of their valuable contracts. The Nixon administration's plan to break away from historic practices, including trade union nepotism, generated controversy. But it survived both public criticism and legal challenges for, I believe, two reasons. First, it did not impose rigid quotas on government contractors, instead requiring contractors to set their own goals by examining the availability of minority workers in the local workforce. Second, although the Philadelphia Plan cited no international covenants, it rested on the twin supports of remedial justice and economic equity. It responded both to overt and subtle forms of racial bias and to a crisis in the



API/WIDE WORLD PHOTOS

economic well-being of minority Americans.

The U.S. Supreme Court first ruled on the constitutionality of a race-based affirmative action plan in 1978, in *Regents of the University of California v. Bakke*. The case produced six opinions from nine Justices, with the views of a single Justice, Lewis E. Powell, Jr., controlling the outcome. Justice Powell disapproved a state-run medical school's affirmative action program, which set aside about one-sixth of the school's seats for minority students, but he wrote that public universities could consider race as one factor, among several, when admitting students.

Like the designers of the Philadelphia Plan, Justice Powell resisted fixed quotas. Schools could consider minority race as a factor favoring admission, but could not designate a set number of seats for minority students. Although Justice Powell's *Bakke* opinion rejected most of the justifications urged by the government in support of affirmative action, he did accept one—that a racially diverse student body would enrich the educational experience for all students. That reasoning is in line with article 26 of the Universal Declaration, which states that public education “shall be directed” to “promoting understanding, tolerance and friendship among all nations, racial or religious groups.”

During the past two decades the Court has become increasingly skeptical of race-based affirmative action practiced or ordered by government actors. State and local attempts to remedy “societal discrimination” have not survived Court scrutiny, despite empirical evidence documenting persistent racial discrimination in education, employment, housing, and consumer transactions. The narrowing of the channel of constitutionally permissible race-based affirmative action has prompted empirical studies reporting the effects of affirmative action in both classrooms and workplaces and has caused even some long-time opponents of affirmative action to reconsider their opposition. What we are witnessing now may show the sagacity of the comment that the true symbol of the United States is not the bald eagle but the pendulum.

The United States, although a way paver, is hardly alone in endeavoring to redress historical and lingering deprivations of the basic civil right to equality and to advance the well-being of minorities that disproportionately experience poverty, unemployment, and ill health. India, for example, has undertaken

affirmative action initiatives in regard to disfavored castes that are both older and more extensive than any program ventured in the United States. India's 1950 Constitution boldly announced a commitment to affirmative action, reserving seats for members of India's lowest social castes in both the House of the People and the state legislative assemblies. And in 1951, in response to a court ruling striking down a quota for students from disadvantaged classes at a state-run medical school, India amended its constitution expressly to permit affirmative action in education and other contexts. Article 15(4) now provides that “[n]othing in [the constitution's anti-discrimination articles] shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens.” India's Supreme Court did impose, in 1963, a 50 percent ceiling on the number of positions that can be reserved for disadvantaged citizens—a limit that may appear startling to observers from legal systems more skeptical of affirmative action.

In the area of human rights, experience in one nation or region may inspire or inform other nations or regions. When India's Supreme Court has judged the constitutionality of affirmative action measures, for example, it has considered U.S. precedents. The same readiness to look beyond one's own shores has not marked the decisions of the court on which I serve. The U.S. Supreme Court has mentioned the Universal Declaration of Human Rights a spare five times and only twice in a majority decision. The most recent citation appeared 29 years ago, in a dissenting opinion by Justice Marshall. Nor does the U.S. Supreme Court note the laws or decisions of other nations with any frequency. When Justice Breyer referred in 1997 to federal systems in Europe, dissenting from a decision in which I also dissented, the majority responded: “We think such comparative analysis inappropriate to the task of interpreting a constitution.”

In my view, comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights. We are the losers if we neglect what others can tell us about endeavors to eradicate bias against women, minorities, and other disadvantaged groups. For irrational prejudice and rank discrimination are infectious in our world. In this reality, as well as the determination to counter it, we all share. ■

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CIRCULATION

Ann M. McDuffie,

Cynthia Strauss

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Governance in

By Thomas Mann

American politics, at least as it is practiced in Washington, is not a pretty sight these days. In contrast to the vibrancy of the U.S. economy and society, the political arena abounds in personal animosity, bitter partisanship, pettiness, negativity, and transparent disingenuousness. Two examples from the last months of the first session of the 106th Congress stand out.

Against the express wish of 62 senators, who urged a delay in the face of its certain defeat, Senate Majority Leader Trent Lott proceeded with a vote on ratifying the nuclear test ban treaty. The outcry around the world over the Senate's repudiation of a major international agreement seemed a small price to pay for humiliating President Clinton. Of course, tactical blunders by the president and his Democratic allies in the Senate were largely to blame for the timing of this ignominious defeat. And legitimate disagreement over the likely consequences of the treaty made building a supermajority coalition for its ratification a decidedly uphill struggle. But the unwillingness of the majority party and its leader to accede to the request of the president to defer action was unprecedented.

The debate over the fiscal year 2000 appropriations bills was no more ennobling or inspiring of confidence in the seriousness and judgment of our elected representatives. Unrealistically tight discretionary spending caps in the 1997 balanced budget legislation posed serious obstacles for the president and Congress in reaching agreement on the new budget. One might have thought that the very robust economic performance that helped turn budget deficits into surpluses would create some room for constructive maneuvering—modest upward adjustments in spending levels in the near term combined with longer-term steps to bolster the

fiscal integrity of Social Security. But that would be too much to expect. Instead, we have been subjected to state-of-the-art budget gimmicks and an altogether phony partisan debate over who is protecting the Social Security surplus.

The poisonous atmosphere in Washington that developed from President Clinton's personal misbehavior and public dissembling, Independent Counsel Kenneth Starr's aggressive investigation, and the House Republicans' decision to impeach the president over the opposition of a strong, stable majority of citizens, has become even more noxious in the ensuing months. Politicians make little effort to hide their contempt for one another. Members of the majority party in Congress routinely assail the president's character and trustworthiness. The president's national security adviser issues a blanket indictment of the Republican party for its supposed neoisolationism. And the talk news shows fan the partisan fires, trivializing whatever serious substantive differences exist and lending prominence to those talking the loudest and taking the most outrageous positions.

But the roots of this distemper among political elites are much more variegated. Most importantly, the parties are more evenly balanced and ideologically polarized than at any time in contemporary history. After decades of minority status, Republicans are pleased to be in the majority, but their margins are razor thin and their leadership weak. While holding the White House for seven years, the Democrats have seen their position erode at every other level of elective office. Changes in the coalitional bases of the parties in the electorate have sharply reduced the ranks of centrists in Congress and shifted the median position in each party toward its ideological pole. And both parties have suffered stinging defeats on major policy initiatives (national health care reform for the Democrats, cutting government and reducing taxes for the Republicans), which has spawned a very cautious approach to policymaking and put a premium on defensive tactics and

Thomas Mann is W. Averell Harriman Senior Fellow in the Brookings Governmental Studies program.

An Overview

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symbolic position taking.

The wide-open, high-stakes 2000 elections reinforce these tendencies. It is no exaggeration to say that both major party presidential nominations, the general election for president, and partisan control of the House, the Senate, and many state legislatures are up for grabs. Nor is it fanciful to conclude that the outcome of those elections will leave an imprint on party gains and losses from legislative redistricting after the 2000 census; the relative strength of parties over the next decade or two; the ideological balance on federal appellate and district courts; and policy directions on such issues as the disposition of the budget surpluses, the restructuring of social insurance, the steps taken toward universal health insurance, the federal role in public education, and U.S. international economic and security policy.

Barren Legislative Harvest

No wonder the legislative harvest from this Congress has been so barren and the parties have disagreed on so much so disagreeably. But is this a condition likely to persist beyond the 2000 election? Is the popular critique of American politics and governance, routinely associated with low levels of public trust and declining turnout rates, accurate? Do fundamental shortcomings in our politics and governance merit serious debate during the 2000 campaign—on a level with challenges of an aging society and brightening the life prospects of Americans left behind by the current economic boom? This special issue of the *Brookings Review* is devoted to providing some answers to these questions.

E. J. Dionne, Jr., sets the stage for this symposium on the process of politics and governance by reminding us of the manifest importance of the ideas that animate public debate and partisan competition. In his book *Why Americans Hate Politics*, published at the beginning of the decade, Dionne argued that the culture wars and ideological battles engaging political activists too often posed false choices and ignored more pressing concerns of ordinary citizens. Candidate Bill Clinton made that argument a central feature of his 1992 presidential campaign. Here, in a reprise of that volume at decade's end, Dionne finds that the politics of false choices has largely been displaced with a public debate about how to deal with real problems affecting the lives of the citizenry. Americans still hate politics, but now for different reasons, ones possibly more amenable to change, especially if the more enlightened and vigorous debate about our future takes hold.

Bill Clinton not only helped alter the contours of political debate in America, he also propelled the presidency further into the world of the permanent campaign. Charles O. Jones argues that the campaigning style of governing embraced by Clinton reflected his own personal skills and instincts but was also responsive to powerful changes in communication and information technology. Future presidents will almost certainly adopt campaigning-to-govern practices popularized by Clinton; the real question is with what effects on governance. Will the permanent campaign be educational for the president and others? Will it be substantive in support of proposals or

merely negative? Will it be purposeful for the presidency or merely personal?

In the next essay Sarah Binder systematically unpacks the concept routinely used to characterize legislative inaction in Washington: *gridlock*. She notes that in many ways gridlock is endemic to our national politics, the natural consequence of separated institutions sharing and competing for power. And yet the performance of Congress varies tremendously over time, ranging from the bountiful harvest of Lyndon Johnson's Great Society Congress to the scant domestic yield of George Bush's last year in the White House. Defining gridlock as the share of salient issues on the nation's agenda left in limbo at the close of each Congress, Binder begins by assessing the effect of the "suspects" usually blamed for gridlock—divided party control of Congress and the White House, the approach of presidential elections, tough fiscal times. But she finds that other characteristics of Congress—partisan polarization, ideological differences between the House and Senate, and Senate rules that allow the minority to stymie the will of the majority—are in fact more powerful predictors of gridlock. Electing more centrists to Congress and loosening the grip of individual senators and intense minorities on Senate business, she says, would help.

Rebuild the Federal Service

Paul Light trains his sight on the coming government war for talent. While the culture of work in America has changed dramatically, the federal civil service has mostly stood still. Graduates of top schools of public policy and administration are shunning what they see as dead-end government jobs where seniority, not performance, matters—and taking public service jobs in private and nonprofit agencies. With the federal government unable to attract or hold young people interested in public service, Light argues, Congress and the president must start building a civil service relevant to a new generation of talent. If not, the coming retirement of baby boomers who took government jobs in the 1960s and 1970s will pose a human capital crisis that could weaken government performance from top to bottom and sink public confidence in government to new lows.

Many political analysts see a powerful trend in recent years toward decentralization in America's federal system, with power devolving from Washington to states and localities. The trend is often viewed as part of a larger phenomenon forecast some years ago by Daniel Bell, in which important decisions migrate from national governments up to global authorities and down to regional and local governments. While Martha Derthick would likely not contest the general proposition, she sees a more complex federalism picture in the United States. The federal system, she argues, is constantly changing, often in contrary directions at once—both centralizing and decentralizing. And so it is today. To illustrate her point, Derthick cites changes in constitutional interpretation by the Supreme Court, in electoral politics, and in the design and administration of public programs dealing with welfare, crime, and education.

News and Politics

No one doubts the importance of how Americans get their news about politics and government for their attitudes toward and participation in the political system. Indeed, many critics lay much of the blame for public disaffection and disengagement from public affairs on practices of the mass media. One irrefutable feature of those practices, charted by Stephen Hess in his essay, is the decline in media coverage of all levels of government—national, state, and local—over the past two decades. Hess acknowledges the rich menu of offerings by the media, the more engaging forms of news presentation, and the bright and talented individuals who fill the ranks of journalism. But for most Americans, who rely on local and network television for information on public affairs, their news pays little attention to municipal government beyond crime and fires, ignores almost entirely state government, and increasingly finds the margins of national government more interesting than the core.

One of the most troublesome developments in American politics is the increasing tendency of political adversaries to use the legal system to embarrass or morally annihilate their opponents. Often referred to as the “criminalization of politics,” it encompasses everything from unsubstantiated ethics charges to questionable demands for the appointment of independent counsel to the use of the discovery process to troll for embarrassing revelations about one’s political opponents. Michael Davidson and Elaine Stone tackle this issue by asking whether the growing number of cases involving charges of misconduct by public officials, now routinely routed through the criminal justice system, could be more sensibly handled otherwise. They discuss the circumstances under which action by the president, investigation by Congress, or inquiry by federal prosecutors is most appropriate. The demise of the Independent Counsel Act makes possible the exercise of more judgment on how best to proceed, informed by law and experience, by proportionality, by competing demands for time and resources, and by common sense.

The conversion of budget deficits into surpluses, one of the Clinton administration’s prize trophies, represents an extraordinary achievement for a supposedly broken and ineffectual political system. Many analysts conclude the explanation is simple: “It’s the economy, stupid.” But is it? Allen Schick argues that budget policy had as much to do with liquidating the deficit as the strong economy. He compares the economic booms of the 1980s and 1990s and finds that the economy cannot adequately account for today’s surplus. The key? The tax increases (almost entirely on upper-income households) enacted in 1990 and 1993 largely reversed tax cuts in the previous decade and added almost \$200 billion in annual revenue to federal coffers. Schick concludes that by taxing the winners during the 1990s, redistributing income and boosting its rev-

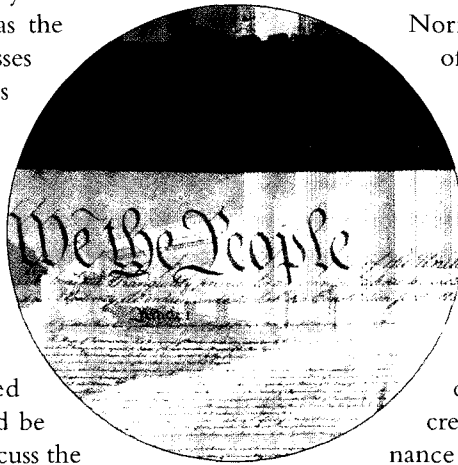
enues, the government produced sound social policy and responsible fiscal policy. And he gives some of the credit to divided government—for blocking Republican ambitions for large tax cuts and deterring Democrats from big increases in social spending.

If fiscal policy has paid handsome dividends in recent years, foreign policy has been much less rewarding. While our national security is not at immediate risk, U.S. foreign policy-making in the wake of the Cold War has become extremely contentious. James Lindsay observes that the general public, relieved of a foreign threat, has retreated into apathy (though not isolationism), while Washington policymakers, unable to agree on a central organizing principle to take the place of containment, disagree about almost everything. In the current atmosphere of policy dissensus, the key to avoiding foreign policy gridlock and incoherence is political leadership. Unable to count on the public and Congress to rally to his side when foreign policy is in question, the president must devote constant effort to shaping and mobilizing public opinion and building political support on Capitol Hill.

The concluding essay in this issue, mine and Norman Ornstein’s, develops further the idea of the permanent campaign and explores ways in which the 2000 campaign might be used to improve conditions for governing in the new millennium. Most of the features of contemporary politics that Americans find distasteful are associated with nonstop, year-round campaigning for election and for policy. The ubiquitous political consultants, pollsters, fundraisers, public relations specialists, talk news entertainers, and pundits create an impression that politics and governance are bereft of principles and ideas and hopelessly rigged by special interests and gamed by politicians consumed by their own reelection. Money is seen to fuel this permanent campaign, in ways that distort how politicians spend their time and who gains advantage in national policymaking.

Ongoing efforts to repair gaping holes in the fabric of campaign finance regulation, improve the quality of deliberation in campaigns, increase and improve media coverage of public affairs, and lessen the harmful effects of excessive partisanship may well pay off modestly in the years ahead. But steps can be taken to raise questions about governance during the 2000 campaign—about transition planning, agenda setting, dealing with Congress, coping with the permanent campaign, building domestic support for foreign policy, and political reform—that offer the possibility of more immediate improvements in the American way of politics.

Moving away from what Dionne calls the politics of false choices and initiating a serious conversation before the election about how we govern ourselves could help our political system catch up with the impressive gains made in the rest of American life. ■



Why Americans Hate Politics

A Reprise

By E. J. Dionne, Jr.

The Clinton presidency will be seen historically as a moment of lost opportunities. It's impossible not to contemplate what Clinton might have accomplished absent the scandal that wasted most of 1998, sapped his authority, and led to the impeachment battle that will permanently scar his presidency.

But the sense of a lost chance is heightened by the other fact about his term in office: the Clinton years will be seen as a time when American politics changed fundamentally. If Bill Clinton did not achieve as much change as he might have, his presidency fundamentally altered the contours of the American political debate.

The surface changes are obvious enough. When Clinton assumed office, E. J. Dionne, Jr., is a senior fellow in the Brookings Governmental Studies program and a columnist for the Washington Post. He is the author of *Why Americans Hate Politics* (Touchstone, 1992).

the budget deficit was a central and debilitating fact of public life. Government could not consider new projects in the face of a sea of red ink—a reality that helped doom Clinton's own health care proposal. With the deficit eliminated, it is possible again to have that most fundamental of political arguments: whether the government should do more or cut taxes.

Shrewd conservatives understood that the end of the deficit meant liberals could be bolder in proposing new programs because they could do so without also proposing new taxes.

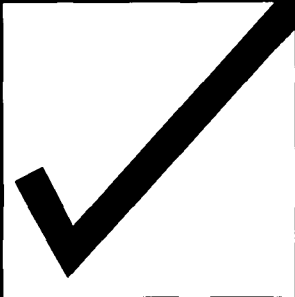
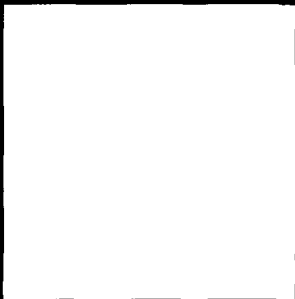
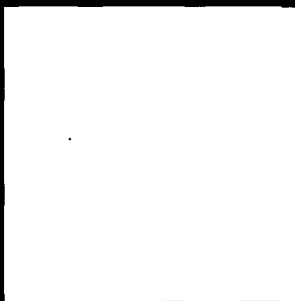
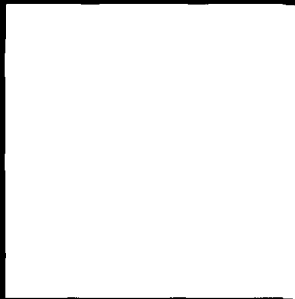
Paul Gigot of the *Wall Street Journal* warned early on that the era of "balanced budget liberalism" would be dangerous to conservatives who had become accustomed to swatting new programs away with arguments that they were unaffordable in light of the deficit. Had not government grown in the early 1960s and 1970s, Gigot asked, when deficits did not figure so prominently in the political debate? The ambitious plans offered by Bill Bradley and Al Gore for expansions of health coverage, pre-

school and after-school programs, and efforts to fight child poverty ratified Gigot's prediction.

The old battles over the role of government were also rendered obsolete. Ronald Reagan's cry was: "The government is not the solution. The government is the problem." George W. Bush has put his case much more modestly. "Government if necessary," he says, "but not necessarily government."

The difference between the two statements is profound, and Bush has gone out of his way to underscore just how big the difference is. In the fall of 1999, he criticized "the destructive mind-set" holding "that if government would only get out of the way, all our problems would be solved." Today's "destructive mind-set" was, just yesterday, a principled conservative argument. "Too often," Bush said for good measure, "my party has confused the need for limited government with a disdain for government itself."

What led to this rethinking (or repositioning) was the defeat of the genuinely ambitious antigovernment pro-



gram the Republicans offered after their triumph in the 1994 elections. Even those who disagree with what the Republicans tried to do owe them a debt for clarifying the issues. In the wake of the budget fights of 1995–96, it was no longer possible to assume that the country was antigovernment, especially if that meant cuts—you can still hear the Clinton speeches—in “Medicare, Medicaid, education, and the environment.” That congressional Republicans proposed nearly as much federal education spending as Clinton did in 1999 (albeit in a different form) suggests how well they understood where public attitudes were drifting.

The most significant policy victory of the post-1994 Republicans was the welfare reform bill of 1996. But the abolition of welfare has had the effect of strengthening the claims of the poor in the public debate. If the poor go to work and still find themselves poor, the moral presumptions of mainstream morality are on their side. And the shift of public spending to programs for the working poor (the earned income tax credit is the most notable and successful) has made it extremely difficult for opponents of economic redistribution to argue that government was intervening on the side of “dependency” or “laziness.”

There is, finally, the simple and very large fact of the prosperity of the 1990s. Debate will go on for years over what precisely created the boom times, when they started—many conservatives still see these good years as part of “The Reagan Economy”—and what combination of policies, economic factors, and accidents brought us back to both low inflation and low unemployment. After the stagflation of the late 1970s and the massive joblessness of the early 1980s, many economists assumed (reasonably enough) that this Nirvana was impossible.

But if the sources of 1990s prosperity will be debated, what cannot be argued is that all the dire warnings offered during the 1993 budget debate were proven wrong. The supporters of supply-side economics insisted that the significant tax increases on the wealthy proposed by Clinton would lead to economic doom. They did not. The wealthy may

have paid higher taxes, but their incomes rose and so, more dramatically, did their capital assets.

Here again, shrewd conservatives understood that their side had suffered a significant—and, in this case, self-inflicted—defeat. The Republicans' mistake, wrote Ramesh Ponnuru in the *National Review*, "was to overstate the case against Clinton's tax increases."

"Instead of predicting that his bill would reduce growth...they said it would plunge the economy into recession," Ponnuru went on. "When this didn't happen, and the economy after a few years of subpar growth started chugging along, Republicans were embarrassed (as much as politicians get, anyway), and, more important, left with nothing to say."

Moving Right, Moving Left

To argue all these things defies a certain popular assumption: that Clinton, far from moving the political debate away from the right, capitulated to the Republicans, notably by signing the welfare bill and by declaring that "the era of big government is over." Both were significant concessions, the first in policy, the second in rhetoric. Both enraged liberals and the democratic left.

It's also true that the Clinton years saw the culmination of a political realignment in the South that guarantees Republicans will be competitive in congressional elections for the foreseeable future. It's hard now to imagine a Democratic lock on the House of Representatives comparable to its dominance in the years 1954 to 1994. That era is over, too.

But in the end, Clinton's tactical shifts toward the right moved the debate away from the right. The fundamental fact of politics in the year 2000 is a shift in the predominant mood. Politics is less ideological, and specifically less ideologically conservative, than it was in the late 1970s and 1980s. Attitudes toward government itself are still far less positive than they were in the early 1960s, before the cultural revolution, Vietnam, and Watergate. But philosophical hostility toward government has ebbed, replaced by a pragmatic inclination sympathetic

to the expansion of public goods and in search of public action in spheres such as education, child care, health care, and the effort to right the balance between work and family life.

Here again, the conservative Ponnuru is more persuasive than any moderate or liberal could be. "Whatever they may say, conservatives know in their bones that their position is weak," he wrote in the late fall of 1999. "What these conservatives sense is that, at a level of politics deeper than the fortunes of the political parties, the ground is shifting away from them. What they have not noticed is that the 2000 election is shaping up to be a ratification not of conservatism but of Clintonism—and will be so even if the Republicans win."

In light of the Clinton scandal, the much-touted public impatience with the "poll-driven politics" associated with the president, and the resulting "Clinton fatigue" that has been so much discussed, how could this be? Much depends on how you define "Clintonism."

In *Why Americans Hate Politics*, published on the eve of the 1992 election and which the editors have asked me to revisit here, I argued that voters were tired of the false choices presented by an ideologically driven "either/or" politics, and impatient with a political debate that emphasized "issues" over "problems." Issues were used at election time to divide voters. Problems demand solutions after the election is over. Following Arthur Schlesinger, Jr., I argued that most Americans preferred to see politics as involving "the search for remedy."

The book saw conservatives as suffering from a deep tension between their free-market, antigovernment libertarian wing and a traditionalist wing more interested in defending values that had come under attack in the 1960s than in market economics. Liberals were also in trouble. While their core programs (Medicare, Social Security, help for the needy, equal rights) were broadly popular, the left had stopped justifying its efforts in the name of values to which most Americans subscribed—work, family stability, consequences for criminal behavior, and a

respect for the old-fashioned bonds of locality and neighborhood.

With both parties to the debate in difficulty, politics worked itself out as a series of wars. Conservatives might not unite around a program, but they could agree to roll back liberalism. To do so, they used tensions in American life over race, gender equality, and cultural change (or "race, rights and taxes," as Thomas and Mary Edsall put it plainly) to divide the liberal camp and hive off working class voters suspicious of liberalism's core values. Liberals often played into conservative hands by seeming to deny that a virtuous community depended on virtuous individuals and by opposing changes in the welfare state aimed at reinforcing certain values (work and family stability among them).

A New Political Center

Why Americans Hate Politics suggested that a new political center was waiting to be born. That center would reflect the public's "liberal instincts" and "conservative values." It would be moderate in its cultural attitudes, broadly tolerant but also respectful of traditional popular leanings on matters of work, faith, and family. The phrase "tolerant traditionalists," invented by William Galston, is a fair summary of the book's take on where a majority of Americans stand on cultural matters. Alan Wolfe's exploration of middle-class social and political attitudes, *One Nation After All*, broadly confirmed this view.

But the new center would also be progressive in its view of government's capacity to ease the suffering of the poor, reduce economic injustice and inequalities of opportunity, and expand access to education, housing, health care, and child care.

It is an inevitable temptation for anyone who has written a book about politics to see subsequent events as vindicating his (or her) view. Having admitted that, I'd argue it's fair to see the past eight years as a long and largely successful war against false choices.

The big government vs. small government argument has faded. The discussion of work and family issues is no longer cast as a war between the family and femi-

nism. Most Americans accept both the legitimacy of women's quest for genuine equality and the importance of protecting family life.

The argument now focuses on how to balance work and family and how to protect the family within a highly competitive labor market. In her just published book *The Missing Middle: Working Families and the Future of American Social Policy*, Harvard sociologist Theda Skocpol argues that a central—perhaps the central—purpose of progressive social policy should be “how we as Americans can continue to care for our grandparents, while doing a much better job than we now do of supporting all working parents as they do the hard and vital work of raising our nation's children.” So much for any side in the political debate claiming a monopoly on the family or “family values.”

Americans of all races have tired of racial polarization. Although arguments about affirmative action still go on—and although events such as the O.J. Simpson trial show that large attitudinal gaps between blacks and whites persist—much of the discussion about race now focuses on expanding opportunities.

Although the welfare bill passed by Congress was deeply flawed, there is little argument that the purpose of social policy should be to promote work and to expand the rewards to those who join the workforce. Here again, Bush's responses are revealing. He chose to take loud public issue with the Republican Congress when it proposed to slow payments of the earned income tax credit. When he declared it wrong to “balance the budget on the backs of the poor,” he was talking about the EITC. The Republican leadership quickly dropped the plan.

The crime issue, so potent in every campaign between 1968 and 1988, has ebbed with falling crime rates. It's hard

Philosophical hostility toward government has ebbed, replaced by a pragmatic inclination sympathetic to the expansion of public goods such as education, child care, health care, and the effort to right the balance between work and family life.

to accuse anyone on any side of being “soft” on crime. And the gun control issue, once of enormous benefit to political conservatives, has become something close to a fair fight as suburban voters make their preference for gun regulation known.

The discussion of the role of religion in public life has also been transformed. The political influence of the religious right has declined, in part because it is no longer easy to cast political progressives as hostile to the views and interests of religious people. Vice President Al Gore's endorsement of government assistance, within limits, to the work of religious charities reflects a sea change in Democratic attitudes.

And although homosexuality is still a difficult issue for many Americans, as Wolfe's study found, it is less divisive than it once was. Gays and lesbians enjoy an acceptance undreamed of three decades ago and can find defenders of their rights in both political parties.

All these changes might be summarized as the decline of the old “wedge” issues which divided the electorate by race, culture, and religion and the rise of what might be called “bridge” issues that assemble new coalitions by reaching across old divides. Bush's use of the adjective “compassionate” in front of “conservative” is an example of such bridging at the rhetorical level. The grope toward a new consensus on education policy—combining reform and tougher standards with more money—is a substantive example.

Which means that Americans have gone from hating to loving politics, right? Of course nothing could be further from the truth. This is one of many paradoxes of the Clinton presidency—and the problem with talking unambiguously about the triumph of Clintonism. For many reasons of his

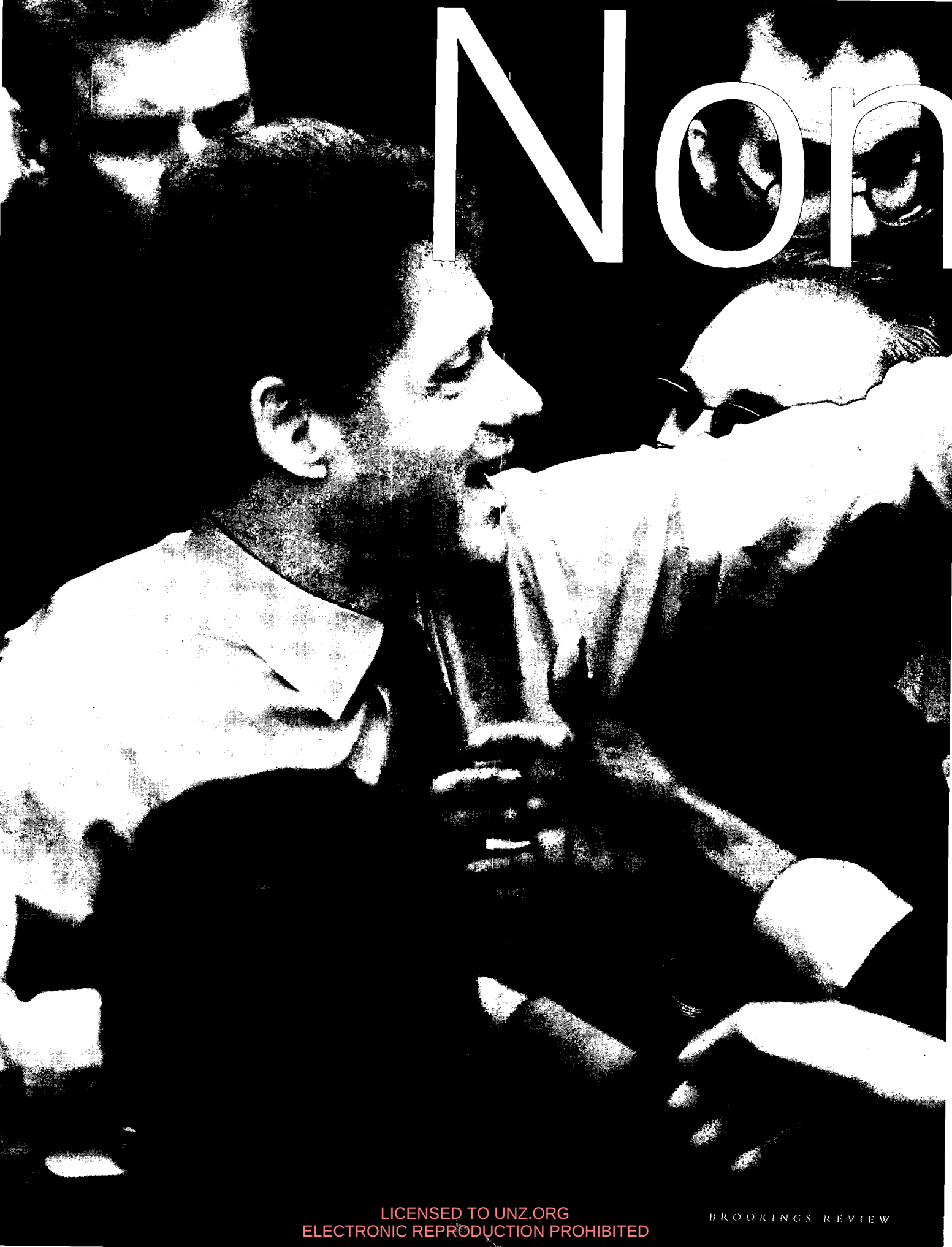
own making (and also because of the ferocious mistrust of his opponents), the Clinton who wanted to be a unifier and a consensus builder became instead a profoundly divisive figure. Precisely because his political successes so enraged some of his opponents, Clinton could not afford to hand them heavy weapons, as he did in the sex scandal. His opponents, in turn, had difficulty letting go of their hostility, as was evident in the fiercely partisan and personal debate over the Kosovo war, so different from the remarkably civil and substantive argument that preceded the Gulf War.

But some problems in politics may be short-term, the result of immediate electoral calculation. Because voting has been so closely divided between the two major parties in recent congressional elections (and because the future control of Congress hangs on so few seats), neither party has been in a mood for compromise—or for doing anything that might give the other side even the tiniest advantage. The 2000 election is a war for control of everything. It is a “three branch election,” as William Kristol has said, since not only Congress and the White House are at stake but so, indirectly, is the future direction of a closely divided Supreme Court.

So if the old ideological battles born in the 1960s and culminating in the 1980s (or, perhaps, 1994) are over, that certainly does not mean that philosophical differences have disappeared from politics.

But after the 2000 elections settle some of these questions, we may have the opportunity to move on from simply waving shirts bloodied from past battles into a cleaner and (you'd like to hope anyway) more enlightening debate about the future. The argument of *Why Americans Hate Politics* was not for a phony consensus or a bland centrism that suppressed differences. It was for a more robust give-and-take over issues that matter not just at election time but afterward, not just to political elites but to voters whose lives could be eased and enriched by better government. As a country, we're not there yet. But over the decade, we've made more progress than we'd like to think. ■

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BROOKINGS REVIEW

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The Campaigning Presidency and the 2000 Presidential Campaign

By Charles O. Jones

Former Senator Bill Bradley (D-NJ) officially opened his campaign for the presidency on September 8. The banner on the podium did not read the usual "Bradley for President." Rather, it identified the campaign web site: www.billbradley.com, thus providing millions of Internet users with an invitation to visit. The response was so great as to require shutting it down the next day. Welcome to the digital age.

Bill Bradley and other candidates enter this political era in the wake of a performance by a natural campaigner, Bill Clinton. Communication and information technology would have advanced dramatically during the 1990s whoever was in the Oval Office. As it happened, however, an instinctive campaigner, Bill Clinton, promoted a more public style of governing, a development referred to by some as "permanent campaigning." It was one of the more serendipitous joinings of a person with innovation and change.

Three observations are relevant for thinking ahead to the next presidency. First, comparisons will inevitably be made between the new president in

2001 and his predecessor, Bill Clinton. Second, and relatedly, power holders in Washington make adaptations to a sitting president that then challenge the successor, who will have his own style. Third, Y2K problems aside, the remarkable advances in information technology are unlikely to be rolled back. They will push on and proliferate.

The questions to be considered are these. How will these realities shape the presidential transition during 2000–2001? How should the president-elect prepare for governing in 2001? Should these developments in constant campaigning be welcomed or resisted?

The 2000 Campaign

Permanent campaigns lack convenient starts and stops. Presidential candidates fit themselves into a continuous flow of public events. They compete with the incumbent president for media and voter attention. Thus, in their travels, presidential candidates are as likely to encounter Bill Clinton as their fellow aspirants. In the era of the permanent campaign, the "lame duck" flies. The sitting president is likely to be motivated by a perceived need to maintain high approval scores, a favorable judgment on legacy, and a wish to preserve continuity in the White House. Bill Clinton has even been moved to provide unsolicited campaign advice to his vice president.

Campaigning to win office will thus run parallel with, and intersect, campaigning to govern. The candidate for the president's party will compete for

time with the incumbent; the opposing party candidates may expect to encounter the parallel campaigns of the new candidate and the incumbent president. Parallel or intersecting campaigns by the incumbent (for governing) and his putative successor (for election) may usually be expected to provide an advantage to the out-party candidate, notably so if the incumbent president and his party's candidate show signs of disharmony. The exception would be if extraordinarily good times encourage voters to support a third term for the incumbent by electing his successor, as some believe was the case in 1988 with George Bush succeeding Ronald Reagan. An activist campaigner-in-office like Bill Clinton, however, may well be more competitive with, than complementary to, his party's candidate.

The campaigning-to-govern style also features continuous efforts to certify the agenda. Whereas past presidents might have accepted a lesser role in agenda setting as their term expired, as Eisenhower did in 1959–60 or Reagan did in 1987–88, the permanent campaigner is unlikely to forgo this initiative. Election campaigns typically serve as issue searches, with candidates taking inventory throughout as a means both to challenge their opponents and to form the policy basis of governing. The era of the permanent campaign will find the incumbent president actively involved in publicizing issues in potential rivalry to those proposed by the candidates. He may, in fact, set the terms of candidate

*Charles O. Jones is a nonresident senior fellow in the Brookings Governmental Studies program. He is the author of *Passages to the Presidency: From Campaigning to Governing* (Brookings, 1998) and *The Presidency in a Separated System* (Brookings, 1994).*

debates in his State of the Union address.

Candidates may also be pressed to take stands on the activist agenda of the permanently campaigning president. Stealth candidacies will be difficult to conduct. With the president actively building support, candidates from both parties will be canvassed for their positions. This effect, too, is one of degree. Candidates have always been asked about their reactions to contemporary events. When the sitting president is such a commanding public presence, however, candidates may find themselves more reactive than proactive in regard to issues.

One possible consequence of constant campaigning may be a celebrity effect. Presidents are, by definition, celebrities. That status is, however, typically associated with their constitutional or institutional position. In Clinton's case, which one might hope is unique, multiple scandals and a devotion to campaigning fabricated a notoriety of a different sort—one based more on personal than public or institutional qualities. Thus, as with celebrities from the entertainment industry, Clinton generated a kind of popularity or notoriety that is not prestige. And, in fact, innumerable polls show the low regard respondents have for the president's personal qualities.

Whereas the Clinton experience with personal scandal is unlikely to be repeated any time soon, still the effect, especially in an era of the permanent campaign, may be detailed probing into the personal lives of candidates to an even greater extent than in the past, a development George W. Bush sought to challenge in regard to inquiries about cocaine use. A related effect could easily be the need for legal counsel in the campaign for purposes other than conformance to election and campaign finance laws.

Preparing for Governing

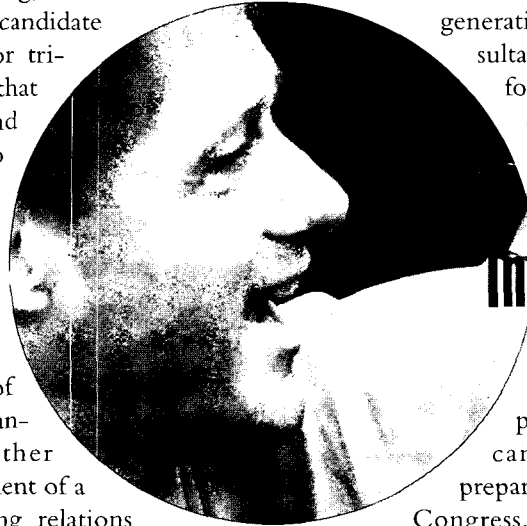
Because canceling the information revolution or altering Clinton's style—or ignoring the effects of either—is unimaginable, the question becomes how candidates should prepare for effective campaign-mode governing.

Given that campaigning carries over into governing, readiness must begin as early as possible. If it is clear from the start that the campaign to win the presidency will influence the who, how, and what of governing, then it is crucial that the candidate manages a bi- or tri-focal approach, that is, looking beyond as an aid to deciding now. It has ever been true that campaigning has lessons for governing, for example, in terms of contacts with candidates for other offices, management of a large staff, testing relations with other power holders, articulation of an agenda, relationships with the press. Normally, however, experience in the national government is needed to recognize and absorb these lessons.

If, because of the permanent campaign, governing is conceptualized as seamless with campaigning, the candidate and his staff can adopt an attitude of governing while campaigning, directing thought and planning toward forming an administration. A candidate taking this perspective will have thought ahead to what he wants to accomplish. His entourage too must know and understand why he wants the job to such a degree that they can then act in his name. This process of goal-setting and identity should begin during the campaign. Those who will be appointed later should be given strong signals during the campaign that they will be involved in governing in some way.

This corporate or holistic conceptualization of seeking and serving demands that the campaign technicians themselves have governing sensibilities. It has been conventional wisdom that campaign consultants and political pollsters should step aside once the campaign is over and the election won. "I think the damn pollsters should be put out to pasture," is how one seasoned staff aide put it. Ready or not, however,

the "damn pollsters" will play an active part in the new administration, as will the other political consultants. They are a vital part of the campaigning-as-governing style. Therefore the candidate is well advised to hire second-generation political consultants—those trained for and interested in campaigning for policy as well as for election.



In the era of the

Least clear, perhaps, is how candidates should prepare to govern with Congress. A campaigning-to-govern style is, by definition, competitive with the declared purposes of a representative legislature. A president commissioning and reading polls, promoting policies within congressional constituencies, communicating policy facts and figures into homes through the Internet, announcing positions on micro-issues, and dominating news coverage is one seeking to measure, anticipate, and influence public opinion so legislators doing their job will be persuaded, if not compelled, to agree. Members of Congress may well resent these efforts, which can therefore come to be counterproductive.

The frequency of split-party government complicates this endeavor. Presidential candidates cannot assume in advance that their party will be in majority control of Congress. Therefore, their preparations will often have to accommodate cross-partisan coalition building. Triangulation may have to be practiced in the campaign, with candidates poaching from the more centrist of the opposite party's offerings. Bill Clinton was a prime poacher in 1996.

Evaluating the Perpetual Campaign

Has the campaigning style of governing enhanced the role and function of the presidency in the separated system? How

is the Clinton experience to be evaluated? Is constant campaigning now an inevitability? If so, is that good or bad? Answers to these questions are properly based on judgments about the institution of the presidency itself. My own perspective in *The Presidency in a Separated System* stressed separationism as suited to a constitutional order in which the presidency, Senate, and House of Representatives compete for shares of power.

ermanent campaign, the "lame duck" flies.

Based on study of post-World War II presidents before Clinton, I proposed several lessons as markers for evaluating the campaigning style, markers that can serve to rate the performance of Bill Clinton's presidency:

- ▶ Learn the job;
- ▶ Know who you are—your strengths and weaknesses;
- ▶ Understand change and how it affects you;
- ▶ Don't mistake approval for prestige;
- ▶ Beware the mandate;
- ▶ Remember that others, too, are legitimate participants.

The test is whether perpetual campaigning enhances or impedes the president in absorbing and applying these guidelines. It is possible, for example, that the travel, speechmaking, polling, and advertising make the president a more perceptive representative in policy and lawmaking. What the president learns may then be applied to each of the directions cited above. Even so, the president must recognize that he is not a representative only. He listens but then is expected to decide. He observes but then is expected to lead. He appoints but then is expected to supervise. He sets priorities but then is expected to negotiate. The campaigning-to-govern style may aid the president in doing a part of the job without necessarily equipping him for the rest.

If the president misconceives campaigning as the job itself, if he misunderstands the place and function of continuous campaigning, the effects can be

negative. In working outside the government, the president may fail to perform well inside the government. Accordingly, he may be misled about his strengths and weaknesses, that is, in knowing who he is in the government. While developing finely honed sensitivity to change outside, he may slight changes in Washington.

Potentially most serious is a possible preoccupation with approval ratings as automatically enhancing prestige. That

absorption may actually reduce his standing inside, with the collateral effect of bad marks for professional reputation. Closely related is the danger of interpreting either the ratings or the public response in travel as confirming a mandate. Conceiving of job approval tests as a continuous series of election days may persuade the president and his team that they know what is right, yet that very concentration may prevent them from getting their way. Why? Because others, too, are legitimate participants (lesson 6) by reason of their continual testing of constituency attitudes. Time spent outside is time lost inside.

How did Clinton perform by these tests? We are unlikely to witness another pure case of the campaigner-as-president again. It is fair to say that Clinton did not learn the job well during his first two years in office. He knew his strengths and stressed those to the exclusion of bolstering his weaknesses. His lack of awareness of change in government was rooted in his unfamiliarity with Washington itself—most notably Capitol Hill. Over the course of his presidency, approval ratings became an obsession, particularly given the assaults on his character of a series of scandals. He fell victim to the mandate trap in his first term, largely because of high expectations associated with the return of one-party government. He would not have to cope with overblown anticipations for the rest of his term—the 1994 elections reshaped the politics of his presidency.

Assessing Clinton's performance by the sixth marker—acknowledging the legitimacy of others—is complicated. His limited experience in Washington prevented a full understanding of the workings of Congress, notably the role of the minority party. Yet he was forced the lesson of congressional status following the 1994 election, and he applied it well in the 104th Congress. Bill Clinton learned to work with, even lead, a split-party government. In fact, his presidency from the final months of 1995 to the Monica Lewinsky scandal in January 1998 may come to be seen as the model for effective campaigning-style governing. The scandal interrupted this record. It is difficult, if not impossible, to acknowledge inter-branch legitimacy when impeachment and trial are under way.

No Turning Back

Is constant campaigning now inevitable? I believe that it is. However, future presidents and other public officials will vary in their skills as participants, as they do in regard to all political characteristics. Few will possess Bill Clinton's talent and zeal for public contact. Many will surpass his organizational and management competence.

Is constant campaigning good or bad? My impression is that most analysts judge that it is bad. And this appraisal on their part is in a venerable tradition of criticism of politicians as crass seekers of reelection. Yet we often reserve our harshest censure for those we need the most—our elected officeholders. Good or bad should be related to effect as well as behavior. The test should be based on something other than an expression of personal bias regarding political form and style. How does a president campaign and with what effect? Is the campaign itself educational for him and others? Is it substantive in support of proposals or merely negative? Is campaigning purposeful for the presidency and governing or merely personal? These are a few of the questions to ask in fairly evaluating a development that is here to stay. The challenge is to ensure positive effects from a changing political environment. ■

Going Nowhere

A Gridlocked Congress?

By Sarah A. Binder

Gridlock is not a modern legislative invention. Although the term is said to have entered the American political lexicon after the 1980 elections, Alexander Hamilton was complaining more than two centuries ago about the deadlock rooted in the design of the Continental Congress. In many ways, gridlock is endemic to our national politics, the natural consequence of separated institutions sharing and competing for power.

But even casual observers of Washington recognize tremendous variation in Congress's performance. At times, congressional prowess is stunning. The Great Society Congress under Lyndon Johnson, for example, enacted landmark health care, environment, civil rights, transportation, and education statutes (to name a few). At other times, gridlock prevails, as when, in 1992, congressional efforts to cut the capital gains tax and to reform lobbying, campaign finance, banking, parental leave, and voter registration laws (to name a few) ended in deadlock.

What accounts for such uneven performance? Why is Congress sometimes remarkably successful and other times mired in stalemate? For all our attention to the minutiae of Congress, we know little about the dimensions and causes of gridlock. How much do we have? How often do we get it? What drives it up and down? Such questions are particularly acute today, as Democrats and Republicans trade barbs over the do-nothing 106th Congress. Despite the first budget surplus in 30 years,

Congress and the president remain deadlocked over numerous high-profile issues (including Social Security, Medicare, managed health care, and campaign finance reform), and they show few prospects of acting on these and other salient issues before the 2000 elections.

An Elusive Concept

Some argue that gridlock is simply a constant of American political life. James Madison bequeathed us a political system designed not to work, a government of sharply limited powers. But surely the framers (dissatisfied with their governing experiment after the Revolution and fearful of rebellious debtors in the states) sought a strong national government that could govern—deliberately and efficiently, albeit insulated from the passions of popular majorities. Gridlock may be a frequent *consequence* of the Constitution, but that does not mean the framers preferred it.

Others might object to labeling legislative inaction as “gridlock.” If a government that “governs least governs best,” then policy stability should be applauded, not derided as gridlock. But views about gridlock tend to vary with one’s political circumstance. Former Senate Majority Leader Bob Dole put it

*Sarah A. Binder is a fellow in the Brookings Governmental Studies program and assistant professor of political science at George Washington University. She is the author of *Minority Rights, Majority Rule: Partisanship and the Development of Congress* (Cambridge, 1997).*



best: "If you're against something, you'd better hope there's a little gridlock." Legislative action, after all, can produce either liberal or conservative policy change. "Gridlock" might simply be an unfortunate choice of words, a clumsy term for Washington's inability to broach and secure policy compromise (whether liberal or conservative in design). If so, understanding the causes of gridlock should interest any keen observer or participant in national politics, regardless of party or ideology.

Evaluating Gridlock

Getting a handle on gridlock is tricky. Typically, scholars assess Congress's productivity, counting up the number of important laws enacted each Congress. When output is low, we say that gridlock is high, and vice versa. But measuring output without respect to the agenda of salient issues risks misstating the true

level of gridlock. A Congress might produce little legislation because it is truly gridlocked. Or it might be unproductive because it faces a limited agenda. With little on its legislative plate, surely Congress should not be blamed for producing meager results. We can evaluate Congress's performance only if we have some idea of the size of the underlying policy agenda.

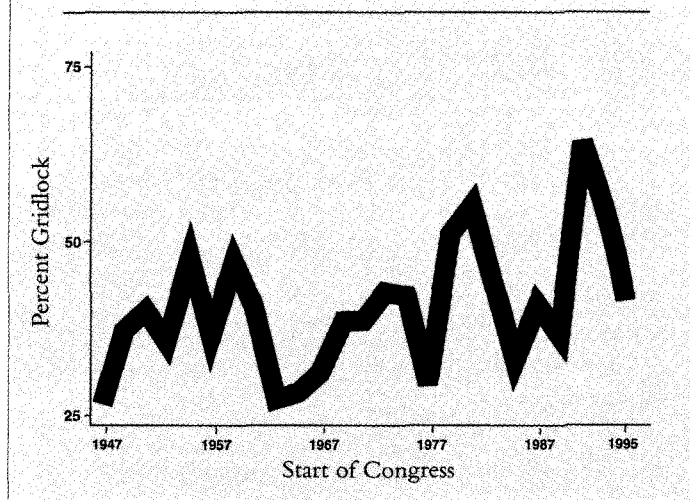
Gridlock is best viewed, then, as the share of salient issues on the nation's agenda left in limbo at the close of each Congress. Just what are the salient issues on the nation's agenda? The editorial page of the *New York Times* (the nation's paper of record) serves admirably as an indicator. Indeed, one can reconstruct the policy agenda for the past half-century of American politics by identifying all the legislative issues of each Congress discussed by the *Times* (whether in support or in opposition—to take into account the paper's often liberal political perspective). Salient issues are those addressed at least four times in a single Congress.

In terms of size, the agenda ranges as we might expect (table 1). It is smallest in the 1950s, in the quiescent years of the Eisenhower presidency. It jumps sharply under the activist

administrations of JFK and LBJ in the 1960s and continues to rise steadily in the 1970s and 1980s. Only in recent years has the number of issues on the agenda declined, most likely reflecting the tightening of budgets and the associated dampening of legislative activism.

Figure 1 shows that gridlock has led a rollercoaster existence over the past 50 years. Is Congress particularly gridlocked today? Critics who claim so are partially right. Gridlock has trended upward since 1947 and has been, on average, 25 points higher in the 1990s than it was in the 1940s. It peaked in the early 1990s, when George Bush faced a Democratic Congress. Fully 65 percent of the 23 most salient agenda issues remained unresolved when the 102nd Congress drew to a close in 1992. With the arrival of unified government under Bill Clinton and congressional Democrats after the 1992 elections, gridlock still

Figure 1. Level of Policy Gridlock, 1947–96



remained at an historic high, with more than half of the 16 most visible issues left in limbo when the 103rd Congress adjourned.

But gridlock does not simply trend upward. From its unprecedented highs in the early 1990s, gridlock dropped 14 points in the 104th Congress (1995–96), reflecting election year compromises on reforming welfare, health care, immigration, and telecommunication laws, as well as increasing the minimum wage. Still, no recent Congress has matched the performance of the Kennedy-Johnson era, four years of legislative prowess in which the Democratic presidents and their Democratic Congresses stalemated on just roughly a quarter of the policy agenda (deadlocking on 14 of the 50 most salient issues across those four years).

The Usual Suspects

How do we account for such variation in Congress's performance? Pundits typically round up some usual suspects to explain unusually high levels of gridlock. Numerous explanations have been offered, for example, for the extreme gridlock that has stymied the current Congress. Among them are divided party control of government, the upcoming presidential election in 2000, the razor-thin majority in the House, and the meager safety cushion provided by a budget in the black for the first time in 30 years. All are plausible explanations for the current impasse in Washington. But how do these culprits stack up against the record of the past 50 years?

Arguments about the effects of divided government traditionally revolve

around the importance of political parties for bridging our separated legislative and executive institutions. Unified party control is necessary, the argument goes, for ensuring that the two branches share common policy and electoral motivations. Under divided government, competing policy views and electoral incentives are said to make legislative compromise unlikely. Both parties seek policy outcomes that enhance their own electoral reputations, but neither side wants the other to reap electoral benefit from achieving its policy agenda.

If the traditional argument about divided government is correct, stalemate should be more prevalent in periods of split party control, less so under unified government. And, indeed, when control of Congress and the presidency has been divided between the parties, 43 percent of the agenda has ended in gridlock, whereas when party control is unified, only 38 percent of the agenda has been left undone. Still, given the pointed criticism perennially lodged against divided government, that mere 5 percentage point difference comes as something of a surprise—except to those who remember the “unified gridlock” of Clinton's first term, when Congress adjourned with much of the Democrats' agenda deadlocked.

What about the suggestion that stalemate is more likely in the run-up to a presidential election? At such times, the party out of power will have a strong incentive to block legislation in hopes of regaining the White House. Republican reluctance to negotiate over tax cuts in 1999 is a prime example of a party seeking to have an “issue” rather than a bill as a presidential election approaches. The logic is sound, the evidence mixed. Gridlock has increased, but only marginally, in the two-year periods leading up to presidential elections. After all, despite the fractious politics of 1995 and the approaching presidential election in 1996, Clinton and the Republican Congress managed to forge compromise on a number of salient issues—including welfare, telecommunications, immigration, health insurance, and lobbying reform. Similarly, the size of the House majority party has not had any systematic effect on the level of gridlock in recent decades.

Conventional wisdom also holds that gridlock is a function of tough fiscal times. When the budget is in surplus, legislative compromise should be easier—because politicians are theoretically no longer caught in a zero-sum game. Whether a coalition seeks higher spending or lower taxes, ample federal coffers can cover the side-payments necessary to forge a successful coalition. The argument rings true at the extremes. The deficit rel-

Table 1. Size of the Policy Agenda, 1947–96

CONGRESS (YEARS)	NUMBER OF ISSUES ON AGENDA
80 (1947–48)	85
81 (1949–50)	85
82 (1951–52)	72
83 (1953–54)	74
84 (1955–56)	84
85 (1957–58)	89
86 (1959–60)	70
87 (1961–62)	129
88 (1963–64)	102
89 (1965–66)	96
90 (1967–68)	119
91 (1969–70)	144
92 (1971–72)	135
93 (1973–74)	133
94 (1975–76)	138
95 (1977–78)	150
96 (1979–80)	144
97 (1981–82)	127
98 (1983–84)	138
99 (1985–86)	160
100 (1987–88)	140
101 (1989–90)	147
102 (1991–92)	126
103 (1993–94)	94
104 (1995–96)	118

Table 2. Contributors to Policy Gridlock, 1951–96

INDEPENDENT VARIABLE	CHANGE IN INDEPENDENT VARIABLE (FROM → TO)	SIMULATED CHANGE IN LEVEL OF GRIDLOCK
Divided government	unified → divided	+8%
Percentage of “centrists”	19% → 34%	-10%
Policy distance between House and Senate	.07 → .30	+13%
Filibuster threat	0 → 7.5	+6%
Budget situation (surplus/deficit as percentage of federal outlays)	-19% → -2%	-2%

Note: The simulated changes in gridlock are based on statistical estimates from a grouped logit model in which the level of gridlock is the dependent variable. Additional independent variables include a set of controls (not shown) for ideological diversity across members, time spent in the minority for each new majority party, and the public mood. Changes in gridlock are simulated by varying the values of each independent variable between the values in column 2 (i.e., one standard deviation below and above its mean value for continuous variables and between 0 and 1 for divided government). For parameter estimates and details on measurement, see Sarah A. Binder, “The Dynamics of Legislative Gridlock,” *American Political Science Review*, vol. 93 (September 1999): 519–533.

ative to outlays stood at nearly 20 percent during the 102nd Congress (1991–92), when gridlock peaked at over 65 percent. When the surplus relative to outlays reached 20 percent during the 80th Congress (1947–48), gridlock was a mere 26 percent. Viewed more broadly over the past half-century, however, the relationship between the two is less direct, though sunnier fiscal times are generally associated with lower levels of deadlock. Excess resources by themselves cannot wipe out gridlock, a finding confirmed by Congress’s current predicament despite the emergent budget surplus.

Other Causes of Deadlock

To accurately map the dynamics of gridlock, we need to recognize the electoral and institutional contexts in which Congress labors. Perhaps the most striking feature of today’s electoral environment is the disappearing political center. If we think of political moderates as those legislators who are closer to the midpoint of the two parties than to their own party’s center, we can size up the reach of the political center over the past five decades. By this score, more than 30 percent of the members of Congress in the 1960s and 1970s were centrists; today, moderates make up less than 10 percent of the House and Senate.

The number of moderates is important because it affects the ease with which policy compromise is reached. When the two major parties are polarized—with few centrist legislators bridging the gap—parties have little incentive to agree and every incentive to distinguish their records and positions. As Congressman Barney Frank (D-MA) observed this past fall, “Right now, the differences between the two parties are so great, it doesn’t make sense for us to compromise. We’ll show where we stand, and let the people decide.” As a result, the relationship between partisan polarization and legislative gridlock is direct, with stalemate more frequent as the political center shrinks.

Similarly, if the two chambers are ideologically akin to one

another—as boll weevil House Democrats and the Senate’s Republican median were in the early 1980s—bicameral agreements should be easier to reach. With the House and Senate quite distant, the prospects for bicameral agreement recede. The fate of Newt Gingrich’s Contract with America is a good case in point, as many of the measures triumphantly passed by House Republicans in 1995 were killed or ignored by the Republican Senate. Over the past half-century, bicameral differences have strongly shaped the incidence of gridlock, leaving the two tightly entwined at century’s end.

Institutional rules also shape the behavior of legislators and policy outcomes. They are particularly important in assessing the conduct of the Senate, where the filibuster makes simple majorities powerless in the face of a determined minority. “Tit-for-tat” filibustering has compounded the problem, as control of the Senate has passed back and forth between Democrats and Republicans over the past two decades. Republican filibusters stymied much of Clinton’s agenda under unified Democratic control in 1993 and 1994. Then, when Republicans regained control of the chamber in 1995, Democrats returned the favor by filibustering conservative initiatives. Even a minority of one can take the Senate hostage by placing a “hold” on bills or nominations headed for the Senate floor until the senator’s (often unrelated) policy or political demands are met. By empowering supermajorities in a political system that moves primarily by majority rule, the Senate makes its own contribution to gridlock.

Forever Gridlocked?

In many ways, Washington’s proclivity for deadlock is preordained—a fact of life given the electoral and institutional worlds of Congress (table 2). Using the past half-century as our guide, we can expect divided party control of government to increase the level of gridlock by roughly 8 percent. Given on average 25 salient issues on the agenda each Congress, the arrival of unified government should resolve on average only 2 additional issues. Incremental slips in the share of moderate legislators have similar effects, here increasing gridlock by roughly 10 percent or an additional 2 to 3 issues. When bicameral differences increase, gridlock also takes a marked step upward—here having the effect of stalemating 3 more legislative issues in the average Congress. In contrast, improved fiscal discipline only marginally affects the incidence of deadlock, with a large fall in the size of the deficit here reducing gridlock a mere 2 percent.

But neither institutional nor electoral features of Congress are immutable. True, we are likely stuck with a bicameral system, despite calls from Governor Jesse Ventura (Reform-MN) and others to consider the unicameral alternative. But the impact of the filibuster can be lessened by reforming Senate rules to make it easier to invoke cloture or by eliminating the noxious practice of anonymous holds. Elections, of course, are the ultimate recourse for voters dissatisfied by partisan polarization and the conduct of Congress. Nudging Congress back to the center by sending more centrist legislators to Washington would be one way to alleviate gridlock. Still, diagnosing the ills of a body politic is one thing; rousing the patient to seek treatment is another.

The federal public service enters the new century in the midst of its most profound transformation since Congress created the merit system in 1888.

During the past two decades, as Congress and the president have simultaneously downsized the federal workforce and devolved responsibilities to states and localities, hundreds of thousands of federal government jobs have moved from government to private firms and nonprofit agencies. Millions of people now work for private and nonprofit contractors and grantees, as well as for state and local governments, delivering services on the federal government's behalf. The faithful execution of federal laws has come to rely increasingly on writing careful contracts, grants, and mandates—the execution of which increasingly falls less to federal employees and much more to employees of private firms and nonprofit agencies. Simply stated, the traditional government-centered public service has been replaced by a much more flexible service composed of government, private firms, and nonprofit agencies.

To this new public service workforce, the traditional federal

twofold. First, its hiring system for recruiting talent, top to bottom, falls short at almost every task it undertakes. It is slow in hiring, almost useless in firing, overly permissive in promoting, out of touch with actual performance in rewarding, penurious in training, and utterly absent in managing a vast and hidden workforce of contractors and consultants from both the private sector and the nonprofit sector who work side-by-side, desk-by-desk with the civil service. Sad to say, when young Americans are asked to picture themselves in government careers, particularly at the federal level, they envision dead-end jobs where seniority, not performance, rules. And when more seasoned Americans are asked to picture themselves in appointive office, they see a nomination and confirmation process characterized by endless inspection, over-disclosure, and delays at both ends of Pennsylvania Avenue.

Second, government appears less and less able to provide the kind of work that today's labor market expects. There is no question, for example, that young Americans are more lightly

The Empty Government Talent Pool

THE NEW PUBLIC SERVICE ARRIVES

By Paul C. Light

service is increasingly irrelevant. Gone are the days when talented employees would endure a seemingly endless hiring process and accept slow but steady advancement through towering government bureaucracies in exchange for lifetime job security. Today's public servants expect to change jobs and sectors frequently and are more focused on challenging work than on security. During their college days, they set annual volunteering records. Now they want jobs with a tangible impact. If that means a job with a private firm or nonprofit agency, so be it.

Having lost its monopoly on public service, government in general, and the federal government in particular, simply is not configured to offer the work that young Americans want. Beset by downsizing, recurrent political scandal, and a never-ending war on waste, the federal government has yet to articulate a clear vision of how to compete against the private sector for talent. Agencies are struggling just to hold the talent they already have, let alone imagine a new public service in which expertise moves more freely across the sectors.

Government's Lost Competitive Edge

The federal government's problem in competing for talent is

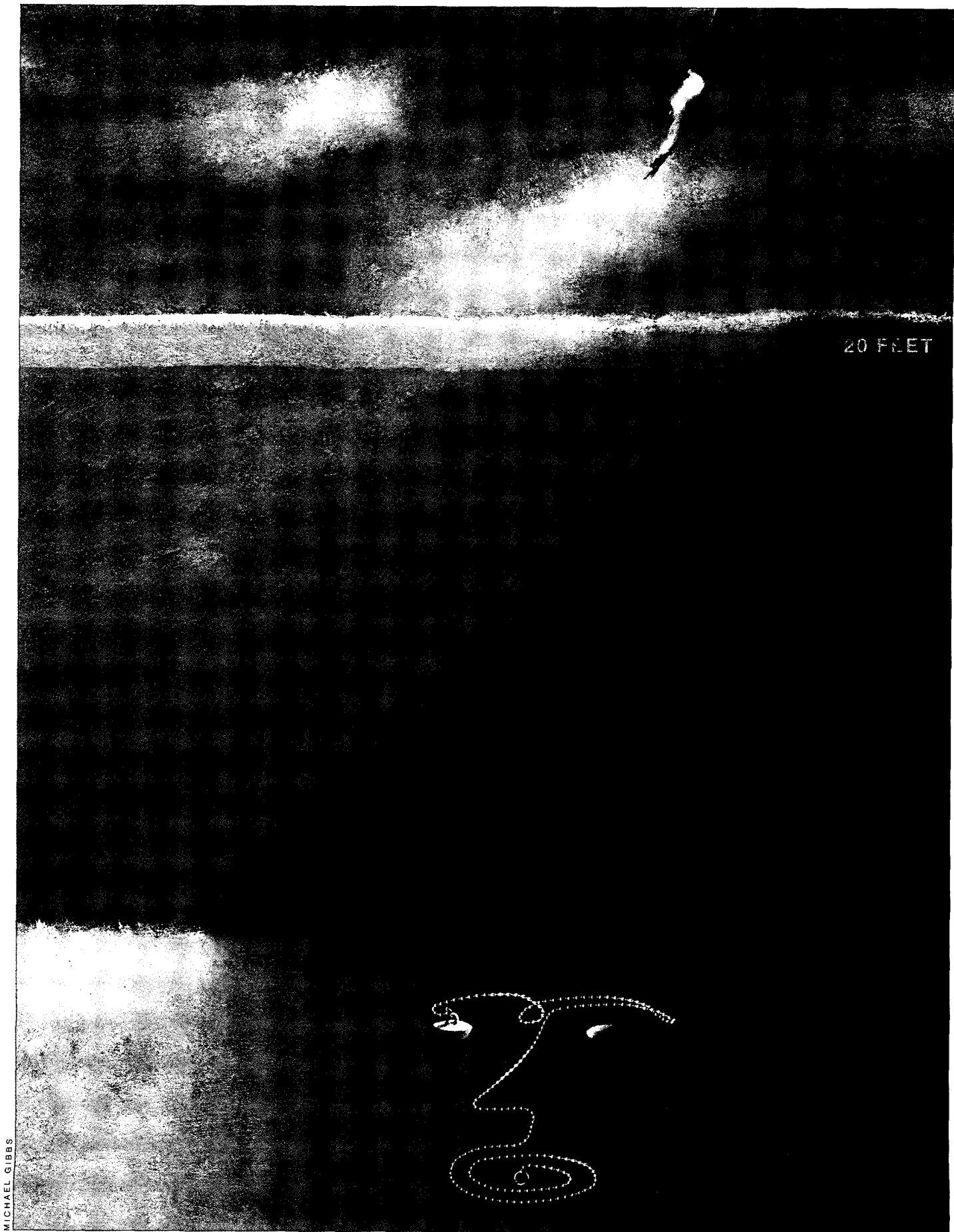
*Paul C. Light is director of the Brookings Governmental Studies program and the author, most recently, of *The New Public Service* (Brookings, 1999), from which this article is drawn.*

attached to work than previous generations or that the most talented among them can demand more from their employers. The civil service system may have mostly stood still since 1978, but the culture of work has changed dramatically, in no small part because of downsizing and corporate mergers. Government is not even winning the battle to attract young people who have already made the decision to spend their careers serving the public—that battle is being won by private firms and nonprofit agencies, many of which work in partnership with the government in delivering services.

Contrary to conventional wisdom, there is little evidence that government can win the recruiting battle with higher pay. Young Americans are not saying, "Show me the money" so much as "Show me the work." And on that count government is losing ground.

The New Public Service

Nowhere is the new public service more evident than at the nation's top schools of public policy and administration. As go graduates of Harvard's John F. Kennedy School, Syracuse University's Maxwell School, the University of Texas's Lyndon B. Johnson School, and their peer institutions, so goes the public service as a whole. As I argue in *The New Public Service*, these graduates occupy a public service clearly at odds with the traditional government-centered career.



MICHAEL GIBBS

Table 1. Where Graduates of the Top U.S. Public Policy Schools Started Their Careers and Where They Work Today

PERCENT	CLASS OF 1973-74		CLASS OF 1978-79		CLASS OF 1983		CLASS OF 1988		CLASS OF 1993	
	FIRST JOB	CURRENT JOB	FIRST JOB	CURRENT JOB	FIRST JOB	CURRENT JOB	FIRST JOB	CURRENT JOB	FIRST JOB	CURRENT JOB
Government	76	50	62	46	68	51	55	39	49	41
Private sector	11	28	21	38	21	30	21	32	23	26
Nonprofit sector	12	15	15	12	12	15	23	25	25	28

Source: Survey of graduates, including 200 members of the class of 1973-74, 231 of the class of 1978-79, 171 of the class of 1983, 192 of the class of 1988, and 196 of the class of 1993. See *The New Public Service* (Brookings, 1999).

The federal government is now on the cusp of a brain drain as the baby boomers who entered government-centered service during the 1960s and 1970s begin to retire.

The new public service, at least as measured by students at the top schools, has four characteristics. First, it is becoming more diverse. Twenty years ago, the average student was a man with a few years in government, if any experience at all. Today it is a woman with significant experience in the nonprofit sector. According to my survey of 1,000 graduates of master's programs in the top schools over the past 25 years, students are entering graduate school later in career and bringing substantial work experience, much of it in the private and nonprofit sectors, into the classroom.

Second, these graduates have a much greater interest in taking jobs outside government. Recent graduates were twice as likely as members of earlier classes to take first jobs in the nonprofit sector and have shown surprising interest in the private sector (see table 1). In all, just over half of recent graduates started their public service careers in a non-governmental setting, with the nonprofit sector gaining the greatest ground against government. Twenty-five percent of members of the class of 1993 took their first postgraduate job in the nonprofit sector, more than double the proportion among the classes of 1973 and 1974 peers.

The rise of the nonprofit sector as a destination of choice reflects big changes in how graduates regard the three sectors. Government is still seen as the sector most likely to represent the public interest, but it has come to trail both the private and the nonprofit sectors on spending money wisely and helping people. Even government employees no longer believe government is the best

place to help people or spend money wisely. Given the nearly uniform commitment to helping people among these graduates, this is arguably the absolute worst position for government in the competition for talent.

The third characteristic of the new public service is that its members move freely among the sectors (table 2). Although the earlier classes had the highest rates of sector switching, those graduates have simply had more time to move. When one compares where graduates went in the first five years after graduation, more recent classes seem likely to exceed the switching rates of their older peers.

The switching rates, however, are not uniform across the three sectors. Government not only trails the private and nonprofit sectors in competing for new graduates, it is also the least likely to hold its talent. Regardless of when they attend school, graduates who take their first jobs outside government are more likely to stay put than those who start inside government.

This is not to argue that the private and nonprofit sectors hold talent especially well. The nonprofit sector was particularly volatile as a first destination, with large shares of graduates moving out over time. But when these graduates moved from a private or nonprofit job, they were much more likely to move to the other nongovernmental sector than into government. Once outside, they were highly likely to stay outside, in part because government offers so few opportunities for entry at the middle and senior levels.

Fourth, members of the new public service remain deeply committed to making a difference through their work. Here the new public service is indistinguishable from the old public service. Graduates of all classes I surveyed shared a common motivation to serve and a common concern for finding challenging work and the opportunity to learn. Recruiting a new public servant is just as simple as it always was: show him or her a good job, with challenge, learning opportunities, a good boss, the chance to make an impact, even a bit of public respect.

How Government Can Regain Its Edge

Government at all levels obviously faces an enormous challenge in competing for talent in what has become a seller's public service labor market. Although higher pay might make the nation's top public policy and administration graduates

take another look at government, pay alone cannot make government more competitive. Nor will aggressive recruiting. Although there are still good jobs in government, the message to government recruiters from the graduates I interviewed is simple: make the work more inviting.

This is not the place to make the case for flatter, more agile government or to argue for broader career paths or even restoring the rotational assignments that once made the federal Presidential Management Internship (PMI) the most exciting learning opportunity in government. Suffice it to note that governments at all levels have neglected career development for decades, allowing individual departments and agencies to ignore the steady calcification of career paths and erosion of learning opportunities.

Even where reform efforts have been made, implementation has been weak at best, hostile at worst. At the federal level, for example, the 20th anniversary of the 1978 federal Civil Service Reform Act was more a cause for black crepe than celebration, its plans for pay for performance an acknowledged failure, its design for an elite, highly mobile Senior Executive Service an insular disappointment, its invitation to experimentation mostly forgotten in a series of tiny initiatives, and its grand inventory of new opportunities for learning and growth a distant, unfunded mirage. State and local governments have hardly done better. With notable exceptions in states such as Minnesota, South Carolina, and Georgia, and cities such as Indianapolis, government hierarchies continue to thicken, while outsourcing fever continues to rise.

What can government do to become more competitive? The first step is to declare a human capital crisis. The govern-

ment talent pool is draining out with less and less in the pipeline to replace it. It is a crisis of staggering importance, one that merits immediate action among legislators and executives alike.

The second step is to become more aggressive at middle- and upper-level recruiting. Government must open more jobs to competition from the outside instead of reserving the vast majority of promotions for internal candidates. No doubt some talented employees will leave government, but the departures may be a small price to pay to gain access to talented outsiders. Most graduates I interviewed, even those who have spent their careers working solely outside government, still believe that working for government is part of a public service career. Indeed, many who come from—and return to—jobs in nonprofit and private agencies are actually working for government. Some 30 percent of students from the private sector and 27 percent from nonprofits report that they spent at least 80 percent of their work time on projects funded by government, while another quarter in each sector said they spent between 20 percent and 80 percent of their time on such projects. For now, however, mid-career graduates find a nearly impenetrable barrier keeping them from entering government itself.

The third step is to recognize that recruitment does not end with the formal hiring process. Government must provide challenging work and the opportunity for growth. It is irresponsible to recruit talented graduates only to squander their commitment in a dead-end job with no chance to make a difference. Today's government, decimated by a decade of downsizing, does not have the human resource expertise to design a recruitment, retention, and career development process to fit the new public service. It must start now to rebuild that expertise.

The fourth and final step is for governments to realize that they are in a talent war with very aggressive competitors. If governments do not want to be the employer of last resort, they must become the recruiters of first approach. They can derive little comfort from having hundreds of names on their application lists if those names come from the bottom quarter of the classes or are drawn to government for the security.

The Coming Brain Drain

The federal human capital crisis has been simmering for the better part of two decades, disguised by the massive downsizings that began with the military base closings after the end of the Cold War. But the federal government is now on the cusp of a brain drain as the baby boomers who entered government-centered service during the 1960s and 1970s begin to retire. Having recruited these employees during a labor surplus, the federal government must now compete during a growing labor shortage, with tools and career paths designed for a bygone era. The result could weaken government performance from top to bottom. Unless Congress and the president begin soon to build a civil service relevant to a new generation of talent, the federal government will take a flying leap into an empty talent pool, sending public confidence in government ever lower. ■

Table 2. Career Paths among Graduates of the Top Public Policy Schools

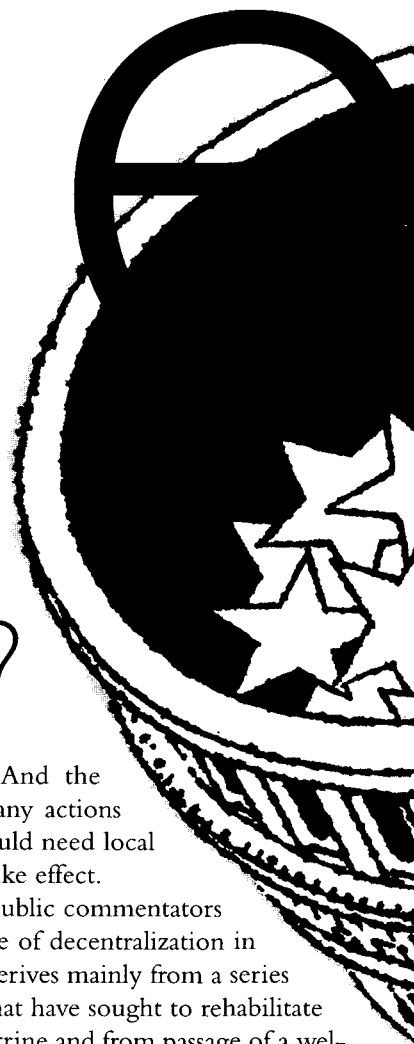
CAREER PATH	SHARE OF GRADUATES (PERCENT)
Started and stayed in government	36
Switched sectors more than once	18
Switched once from government to the private sector	11
Started and stayed in the private sector	10
Started and stayed in the nonprofit sector	8
Switched once from government to the nonprofit sector	5
Switched once from the private sector to government	3
Switched once from the private sector to the nonprofit sector	2
Switched once from the nonprofit sector to government	2

Source: Survey of 1,000 graduates. See *The New Public Service* (Brookings, 1999).

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FEDERALISM

Half-Full or Half-Empty?



Last August the *Wall Street Journal* noted that some taxpayers were claiming that they did not have to pay federal income tax because they were residents of a state, not the United States. A few weeks earlier the *New York Times* carried a story describing Vice President Albert Gore's plan to have detailed positions on a wide range of issues in his quest for the Democratic presidential nomination in 2000. At the top of his list was education, a function not long ago considered a preserve of state and local governments.

Gore's "blizzard of positions" included preschool for all children, a ban on gang-style clothing, teacher testing, "second-chance" schools for trouble-prone students, back-to-school parent-teacher meetings where a strict discipline code would be signed, and "character education" courses in the schools. Gore proposed to amend the Family and Medical Leave Act to permit parents to attend the parent-teacher meetings during working hours.

As these contrasting conceptions suggest, American federalism is a highly protean form, long on change and confusion, short on fixed, generally accepted principles. In the event, a tax court judge fined the taxpayers who claimed not to be cit-

izens of the United States. And the *Times* reporter hinted that many actions Gore planned to "require" would need local school board cooperation to take effect.

As the 20th century ends, public commentators often suggest that this is a time of decentralization in the federal system. The view derives mainly from a series of Supreme Court decisions that have sought to rehabilitate the states in constitutional doctrine and from passage of a welfare reform act in 1996 that office-holders and analysts alike interpreted as radically devolutionary.

But matters are more complicated than that. American federalism was born in ambiguity, it institutionalizes ambiguity in our form of government, and changes in it tend to be ambiguous too.

To sort out what is happening, I will distinguish among three spheres of activity: constitutional interpretation by the Supreme Court; electoral politics; and the everyday work of government as manifested in policies and programs.

The Supreme Court

A narrow majority of the Rehnquist Court led by the chief justice attaches importance to preserving federalism. To that end, it has made a series of daring and controversial decisions that purport to limit the powers of Congress or secure constitutional prerogatives of the states.

Martha Derthick is professor of government and foreign affairs emeritus at the University of Virginia. She is the editor of Dilemmas of Scale in America's Federal Democracy (Cambridge, 1999).



By Martha Derthick

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In *Printz v. U.S.* (1997) the Court invalidated a provision of the Brady Handgun Violence Prevention Act that required local law enforcement officers to conduct background checks on all gun purchasers. The Court objected that the provision impermissibly violated the Tenth Amendment by commandeering the state government to carry out a federal law. An earlier opinion, *New York v. U.S.* (1992), had begun to lay the ground for

the anticommandeering principle. In another leading case, *U.S. v. Lopez* (1995), the Court held that Congress had exceeded its commerce clause power by prohibiting guns in school zones. Still other decisions signaled a retreat from federal judicial supervision of school desegregation, prison administration, and the judgments of state courts. Another line of cases has secured the state governments' immunity from certain classes of suits under federal law.

Some analysts profess to see a revolutionary development here, but qualifications are in order. The Court decides many cases in which it does not

give primacy to federalism, as for example a 7-2 ruling in 1999 that state welfare programs may not restrict new residents to the welfare benefits they would have received in the states from which they moved. This ruling

struck down a California law and by implication a provision of federal law that had authorized it. Moreover, the majority that has decided the leading federalism cases is narrow (often 5–4) and tenuous, inasmuch as it includes some of the oldest members of the Court. The decisions have not exactly been hailed by legal scholars, even some who might be thought sympathetic. Charles Fried of the Harvard Law School, a former solicitor general in the Reagan administration, denounced the series of decisions last June on immunity from suits as “bizarre” and “absurd.”

If this is a revolution, it is one that may not last.

Electoral Politics

Speaker Thomas P. O’Neill’s famous aphorism that “all politics is local” applied to virtually all structural aspects of U.S. electoral politics for a very long time. Determining electoral districts and voter qualifications, mobilizing voters, and financing campaigns were the province mainly of state laws and customs and were locally rooted well into this century. But that has ceased to be true under the impact of 20th-century constitutional amendments extending the electorate, as well as federal statutes and judicial decisions governing apportionment and voting rights. Federal supervision now extends even to such matters as ward-based versus at-large elections in local governments. And changes in technology and in social and economic structures mean that candidates for congressional seats or even lesser offices do not depend exclusively on funds raised from local constituencies. Candidates may get help from party committees and interest groups organized on a national scale.

Nationalization of electoral practices proceeds apace at century’s end. The Motor Voter Act of 1993 requires states to allow all eligible citizens to register to vote when they apply for or renew a driver’s license. It also requires states to allow mail-in registration forms at agencies that supply public assistance, such as welfare checks or help for the disabled. The costs are borne by the states.

Nevertheless, one hesitates to insist that our electoral processes are being comprehensively nationalized at a time when governors seem to have gained an advantage in access to the presidency, growing, arguably, out of the public’s now chronic distrust of the national government. Of the four last presidents in this century, three were governors before they were elected, and in the run-up to the 2000 election, a governor, George W. Bush of Texas, has secured a large and early advantage over other Republican candidates. He owes his success partly to other Republican governors—of whom there were 32 after the election of 1998—who have backed him under the lead of Michigan’s John Engler. To find a presidential nomination that originated in the action of elected state officials, one must go all the way back to 1824, when several state legislatures put forth candidates.

Policies and Programs

It is necessary to be selective because there are so many policies and programs. I will concentrate on three sets—welfare, schools, and criminal justice—that have traditionally been

regarded as quite decentralized. Indeed, for decades they constituted the bedrock of local government activity.

The welfare reform legislation of 1996 is everyone’s leading example of decentralization in action. The law converted what had been an open-ended matching grant, with federal funds tied to the number of cases, to a fixed-sum (“block”) grant and explicitly ended individuals’ entitlements to welfare. States gained freedom to design their own programs, a change already largely effectuated by White House decisions during the Reagan, Bush, and Clinton administrations to grant waivers of certain federal requirements to individual states. The decentralization of program authority in this case was an important change in intergovernmental relations. Still, its significance must be put in perspective.

Whatever may have happened with welfare in 1996, income support, which is the core function of the modern welfare state, has been largely federalized in the United States in the six decades since 1935. Social Security, Supplemental Security Income (SSI), and food stamps accounted for \$431 billion in federal spending in 1998, compared with \$22 billion for welfare, now known as TANF (or Temporary Assistance for Needy Families). I pass over the earned income tax credit, weighing in at a volume comparable to that for welfare, a use of federal tax law for income support that would take us too far afield here.

Welfare could be decentralized in 1996 in large part because, unlike income support for the aged and the disabled, it had never been fully centralized. The main change in 1996 was a national policy change that strongly discouraged dependency and certain behavior, especially out-of-wedlock pregnancies and lack of child support from fathers, that had come to be associated with welfare. To carry out this policy change, the new law imposed some stringent federal requirements, such as time limits for receipt of welfare, on the states. Surprisingly, a liberal president and conservative members of the new Republican majority in Congress coalesced in support of legislation, but the national coalition was so frail and incomplete that it became necessary to lodge discretion in the states to achieve a result.

That is one of the traditional functions of American federalism: in the absence of agreement at the national level, discretion can be left to the states. Typically, through *inaction* by Congress, matters are left with the states, which have initial jurisdiction. What was new in 1996 was that AFDC (Aid to Families with Dependent Children) had become sufficiently centralized in the generation since the mid-1960s that giving discretion to the states required an affirmative act. It required giving back some portion of what had been taken away, as much by federal courts as by Congress. “No more individual entitlement,” the most arresting phrase in the act, was directed at altering relations between Congress and the federal judiciary. I would argue that the law had at least as much significance for what it said about interbranch relations at the federal level as about relations among governments in the federal system.

Elementary and secondary education, far from being off-limits to national politicians as a local matter, has risen to the

top of their rhetorical agenda. It took a year for Congress to reauthorize the Elementary and Secondary Education Act in 1993–94. The resulting law consumed 14 titles and 1,200 pages, covering subjects as wide-ranging as academic standards, racial desegregation, language assessments, migrant education, teacher training, math and science equipment, libraries, hate-crime prevention, vouchers, school prayer, sex education, gay rights, gun control, the handicapped, English as a second language, telecommunications, pornography, single-sex schools, national tests, home schooling, drugs, smoking—and more. The level of detail was minute. Any state receiving federal funds had to require that any student who brought a gun to school would be expelled for at least a year. Local officials could, however, modify the requirement on a case-by-case basis. School districts also had to refer offenders to local law enforcement officials. Developmentally disabled students were subject to the expulsion rule, but if school officials established that their behavior was related to their disability, the students could be placed in an alternative educational setting for up to 45 days instead.

In 1999, when the act was again up for reauthorization, Congress by wide margins enacted “Ed-Flex,” the Educational Flexibility Partnership Demonstration Act, which authorized the Secretary of Education to implement a nationwide program under which state educational agencies could apply for waivers of certain federal rules. To be eligible for Ed-Flex, states had to develop educational content and performance standards and procedures for holding districts and schools accountable for meeting educational goals. One could point to this law, of course, as an example of decentralization; members of Congress naturally did so. But in education as in welfare, the subject of waivers would never have arisen had not a vast body of law and regulation developed from which relief had to be sought.

In criminal justice, it remains true that most police and prosecutors are state and local officials. Ninety-five percent of prosecutions are handled by state and local governments. Yet federal criminal law has grown explosively as Congress has taken stands against such offenses as carjacking and church burning, disrupting a rodeo and damaging a livestock facility. A 1999 task force report of the American Bar Association documented and decried this development but is unlikely to stop, let alone reverse it.

The “Mores” of Intergovernmental Relations

In everyday affairs, how do we and our officials think and talk about governments in the federal system? Without having any evidence to support my point, I would argue that citizens and journalists routinely refer to “the government” as if there were only one—the Big One. That this is a country of many governments, though a patent fact, is nonetheless a fact that it takes a pedant or a lawyer to insist on.

Moreover, we are now accustomed to reading that Washington is giving orders to the states, or at least exhorting them to act in regard to one or another matter in which they have been found deficient. Some sample headlines from end-of-

century stories in the *New York Times* would appear very odd to a student of American government who had gone to sleep in, say, 1955 and just awakened: “Clinton to Require State Efforts to Cut Drug Use in Prisons” (January 12, 1998); “White House Plans Medicaid Coverage of Viagra by States” (May 28, 1998); “Clinton to Chide States for Failing to Cover Children” (August 8, 1999). None of this is to say that the states promptly act on orders or admonitions from Washington, only that Washington is accustomed to giving them, without pausing to question the appropriateness of doing so—as is evident from an executive order on federalism that the Clinton administration issued, suspended when state officials angrily protested, and then issued in much revised form.

The offending order, issued in May 1998, contained a set of criteria for policymaking by federal agencies that was broad and inclusive enough invariably to justify federal government action: “(1) When the matter to be addressed by federal action occurs interstate as opposed to being contained within one State’s boundaries. (2) When the source of the matter to be addressed occurs in a State different from the State (or States) where a significant amount of the harm occurs. (3) When there is a need for uniform national standards. (4) When decentralization increases the costs of government thus imposing additional burdens on the taxpayer. (5) When States have not adequately protected individual rights and liberties. (6) When States would be reluctant to impose necessary regulations because of fears that regulated business activity will relocate to other States. . . .” Only the most obtuse and indolent federal administrator could not have put this list to use.

The revised executive order, issued following consultation with state officials, was completely different. The section on policymaking criteria called for “strict adherence to constitutional principles,” avoiding limits on policymaking discretion of the states except with constitutional and statutory authority, granting “maximum administrative discretion” to the states, encouraging states to “develop their own policies to achieve program objectives,” where possible deferring to the states to “establish standards,” consulting with appropriate state and local officials “as to the need for national standards,” and consulting with them in developing national standards when such were found to be necessary.

It is hard to imagine a more complete about-face. It is also hard to know how to interpret the event. One can cite the original order as evidence of the imperious attitudes that high federal officials actually bring to intergovernmental relations, or one can cite the revision as evidence of the continuing power of the states. In studying American federalism, the analyst is forever asking whether the glass is half-empty or half-full. That is the appropriate question as the century turns, and the answers are to be found more in the day-to-day operations of intergovernmental relations than in either Supreme Court decisions or executive orders. It requires a blind eye to call ours an era of devolution. But even with two sharp eyes, it is hard to detect a plain answer. Everywhere one looks, the answer remains murky and many-sided. ■

Federalism & News Media to Government:

By Stephen Hess

The delicate balance of levels at which government performs in the United States, which we call federalism, is not something to which newspaper editors and TV producers give much thought as they arrange the diet of information that is served up daily to the American people. Yet coverage of the three divisions of government—city, state, and national—provides a useful way of examining changes in the news media over the two-plus decades I've been looking over journalists' shoulders.

The most obvious change in governmental and political news since I started studying it in the late 1970s is that a lot less of it reaches the mainstream press. This is not coincidence or a reaction to external events, as when the end of the Cold War gave news organizations an excuse to save money running foreign bureaus. A 1980 report by pollster Ruth Clark for the American Newspaper Publishers Association, as well as work

by TV consultants, helped create what became known as “consumer-driven” journalism. Self-help information was in. Celebrity features were in. Hard news about government was out.

A statistical measure of this trend, prepared by the Project for Excellence in Journalism and reporting on 3,760 stories from the front pages of the *New York Times* and *Los Angeles Times*, the ABC, CBS, and NBC nightly news programs, and *Time* and *Newsweek*, showed that from 1977 to 1997, while the number of stories about government dropped from one in three to one in five, “the number of stories about celebrity tripled, from one in every fifty stories to one out of every fourteen.” By 1992 University of Maryland professor Carl Sessions Stepp would write, “Journalists clearly believe that the public’s eyes glaze over when the topic is government and politics.”

Supporting evidence of the public’s inattention to major political events comes from the Pew Research Center’s list of most closely followed stories during 1986–99. The stories of greatest interest tend to be plane crashes, hurricanes, floods, earthquakes. In 1987, for instance, 69 percent of Americans were very interested in the story of the rescue of a little girl in Texas who had fallen

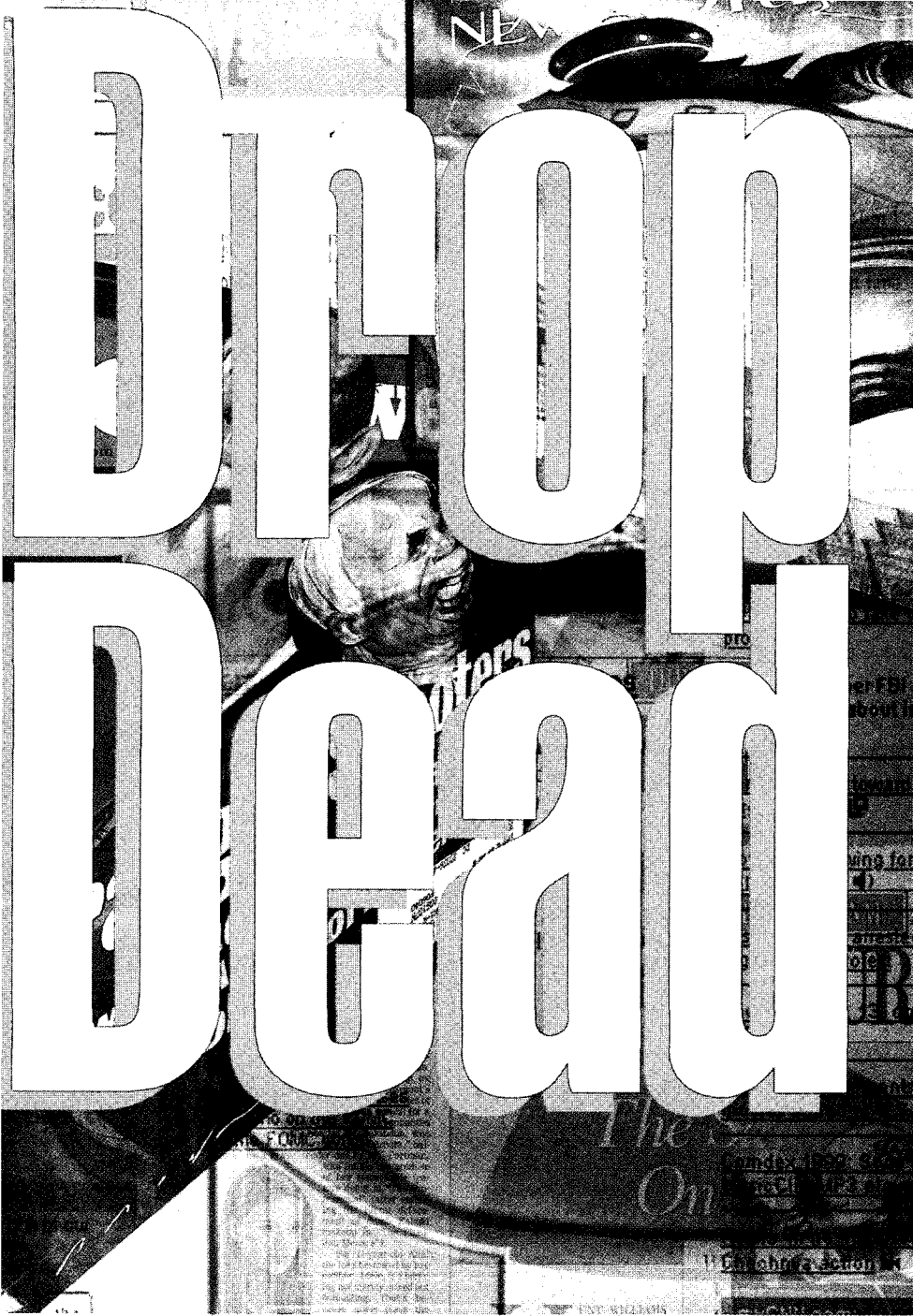
into a well, while only 33 percent closely followed the congressional hearings on the Iran-Contra affair. The counter argument of circularity, of course, is that the public can hardly be expected to be interested in what is not adequately reported.

Dateline: Washington

What has happened to media coverage of news from each of the three federal levels of government over the past two decades? “What is most immediately apparent,” I wrote in 1978, “is that news of Washington dominates the media’s attention [throughout the United States].” That is no longer true. The newspapers I then examined averaged 12 Washington stories a day; my resurvey in 1998 cut this number in half. The biggest gainer over the 20-year period is local news, as illustrated by the datelines of front-page lead stories:

Front Page Lead Stories (percent)		
DATELINES	1978	1998
Washington	45	36
Local (city/state)	37	54
International	11	7
Another state	7	4

Stephen Hess is a senior fellow in the Brookings Governmental Studies program. He is the author of Presidents & the Presidency (Brookings, 1996) and News & Newsmaking (Brookings, 1996).



Every other indicator showed declining attention to news from Washington, especially on the network TV evening news programs, where lead stories from Washington went from 12 of 15 in 1978 to 7 of 15 in 1998. Meanwhile, local TV news programs became the most popular source of information in the United States. Their rigid formula of crime and fire reports, weather, sports, consumer news, and national headlines, however, left little room for stories about municipal government or elections. One survey of 13 cities drawn from the top 23 markets during the month before the 1996 elections reported 22 percent of the sto-

ries were about crime and 7 percent about politics.

The stepchild of government coverage has always been the state. Often state governments make themselves difficult to observe. Only 19 of the 50 states have their capitals in their major cities. Some capitals were deliberately placed at the center of the state in deference to the rutted roads of frontier America. The history of siting the seats of government has a certain charm. Tallahassee was chosen, in part, because it was as far away from Indians and swampland as possible. No state capital was chosen so as to be close to journalists. Still, the situation has

deteriorated, as noted in the most comprehensive investigation of state capital news, published by the *American Journalism Review* in mid-1998. "Coverage of state government is in steep decline. In capital press rooms around the country, there are more and more empty desks and silent phones. Bureaus are shrinking, reporters are younger and less experienced, stories get less space and poorer play, and all too frequently editors just don't care." The article, by Charles Layton and Mary Walton, was accompanied by a state-by-state (and paper-by-paper) survey. A year later a resurvey found some improvement: reporting commitment up in 24 states, unchanged in 13 states, slipping in 13 others.

Washington as Theme Park

Major changes in the newspaper business in the past two decades have affected what and who in Washington are considered newsworthy. According to Robert Rankin of the Washington bureau of Knight Ridder, whose papers include the *Philadelphia Inquirer* and *Miami Herald*, "As the '90s evolved, our papers showed less and less interest in any news from Washington. In response we changed our beat structure. In addition to traditional beats such as the White House and Congress, we added theme specialties such as science and technology, religion and ethics, and consumer affairs beats. . . . As time went on we shifted our mission to be less a Washington bureau and more a national bureau." The Newhouse Newspapers reached the same conclusion. Washington bureau chief Deborah Howell moved a third of her reporters to assignments with labels like "race and ethnicity," "family and children," and "doing good." News sources in government increasingly moved to such outer ring agencies as the Food and Drug Administration, the National Institutes of Health, the Consumer Product Safety Commission, and the National Science Foundation. Reporters' sources also expanded to experts in universities, advocacy groups, and think tanks. During 1991-97, according to tabulations of Kent Weaver, Washington-based think tanks were quoted 20,958 times in the

combined pages of the *Washington Post*, *New York Times*, *Christian Science Monitor*, *USA Today*, *Wall Street Journal*, and *Washington Times*.

Most notably, the Washington press corps expanded to cover business and finance. My 1981 Brookings book, *The Washington Reporters*, compared the prestige of Washington newsbeats and found that, out of 13 possible assignments, economics ranked 11th. Why was it so low in the pecking order? "Partly because Washington reporters define power in political terms, not economic terms." But by 1999 Diana Henriques of the *New York Times* would tell a Harvard conference in Washington, "Business now dominates the world we cover, our values, our priorities, our agenda, our allocation of resources, to a degree that would have been unthinkable just two generations ago."

A less innovative but common way for a paper's bureau to deal with the public's loss of appetite for Washington news was to downplay what one reporter called the "turn of the screw daily developments" and another called "he said, she said daily stories." In 1978 newspaper reportage from Congress mirrored the textbook treatment of how a bill works its way through the legislative process, rightly giving special attention to the key committee stage. By 1998 the emphasis was overwhelmingly on final floor action rather than the

the way and which special interests were doing the arithmetic.

Smaller newspapers or groups increasingly took their "hard news" from the wire services (Associated Press and Reuters), added special features from supplemental services (*New York Times*, *Washington Post*, *Los Angeles Times*), and more and more concentrated their limited Washington resources on producing regional news, stories that revolve around local issues and people from their circulation area. That cut down on the redundancy evident in 1978, when, as Robert S. Boyd, then bureau chief of Knight Ridder, told me, "All reporters want to play at the center of the field," and editors often got three or four versions of the same event.

Beaming Washington Home

As newspapers' Washington coverage was going from national to local, TV stations' Washington bureaus were going from local to national. In the early 1980s technology dramatically altered local TV news operations. Relatively inexpensive lightweight video cameras became available, tape replaced film, and, most important, commercial satellites could instantly transmit edited or live pictures to ground stations. News directors were

fascinated by the idea of their own correspondents reporting nightly from the nation's capital, and smaller stations commissioned stories from a growing cadre of freelancers. It was a golden age for regional TV news. And it lasted almost a decade—until station managers concluded the stories didn't excite viewers and were an added cost.

The 1996 Telecommunications Act expanded TV and radio ownership and once again changed the configuration of news from Washington. The bureaus of companies like Hearst-Argyle (26 TV stations), Belo (17 stations), Tribune (17 stations), and Cox (8 stations) began emphasizing stories that could be used by all their outlets. When they were smaller entities, according to veteran correspondents, the ratio had been 4:1, four stories geared to individual markets for every national story; now the ratio was reversed, national over local. The irony, of course, is that an appropriate media coverage of federalism would allocate local angle stories to the stations and national stories to the networks.

Yet somewhere in the past 20 years the networks abdicated their responsibility as serious conveyors of news about national governance. Compare the story packages of the CBS Evening News on

Newspaper Stories (percent)		
LEGISLATIVE STAGE IN STORY	1978	1998
Introduction of legislation	3	8
Subcommittees	20	12
Committees	37	16
Floor action	35	60
Conference committees	5	4

complicated bargaining that preceded it. Here the newfound editorial distaste for "process" has created a palpable distortion. Coverage that relies mainly on final passage of a bill is likely to ignore what was added and subtracted along

TABLE 1. TWO NIGHTS ON THE CBS EVENING NEWS

APRIL 11, 1978	APRIL 21, 1998
(Washington) President Carter's speech, anti-inflation proposals.	(Washington) Government rules on juice products that can make you sick.
(Washington, Kansas) Reactions to proposals; energy bill to Congress.	(Los Angeles) Government sues Microsoft introduction of Windows 98.
(Washington) Top USSR UN official Shevchenko disappears.	(Washington) Auto engineers try to find ways to make sport utility vehicles safer.
(South Lebanon) Israel plans for partial withdrawal.	(New York) Viagra produces record profit for drug company.
(North Carolina) Profile of 103-year-old woman.	(Washington) Accusation of shoddy work at FBI crime lab.
	(Boston) Tale of man abducting daughters.
	(Florida) Series on dangerous drivers.

two Tuesdays (see table 1). (CBS, it should be noted, is considered the network with the most traditional news value.)

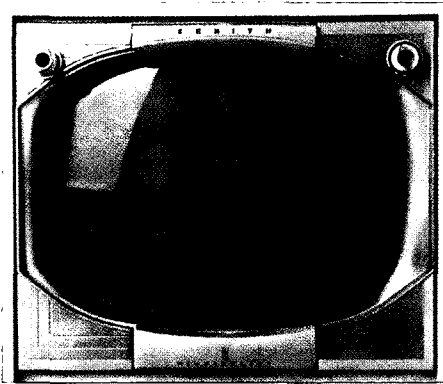
The final element of the current media mix is cable TV. (Internet journalists are not yet significant players in Washington.) The major impact of CNN, which made its debut in 1980, was to change the time frame of reporting. As a 24-hour conveyor belt of information, and one beamed to the Washington journalists' bosses, its presence created a rush to judgment. Or in the words of the AP's Walter Mears, "There's not much time to think." CNN, which now has more overseas bureaus than the three broadcast networks combined, also reminds us that there is still a world out there. The contribution of MSNBC and

other channels to surf. And the Internet will overwhelm us all if we don't watch out.

The presentation of information is more engaging today. Given television's technological advances, especially in video editing facilities, Andrew Tyndall is probably right in claiming that "to a modern eye an evening of CBS coverage from 1968 looks like an edited C-SPAN highlight reel." And the stunning graphic design and color introduced into daily newspapering in 1982 by *USA Today* is not to be sneered at. There is nothing holy about being boring. And luring citizens into public affairs is a worthy objective.

Journalism in Washington continues to attract bright people. According to the Pew Research Center, a third of

balance of political news exactly right. Among other things, political boundaries usually do not coincide with media boundaries. Newspapers and TV stations slip over city lines into suburban jurisdictions and sometimes even cross state lines. Northern New Hampshire gets its TV from Maine, southern New Hampshire from Boston. Yet something interesting has been happening in newspaper ownership. According to journalism educator Jack Bass, major companies "are swapping properties like baseball cards, unloading papers that don't fit their geographic strategies and acquiring ones that do." A tighter concentration of papers, grouped around a state or region, provides the opportunity for more rational political coverage. At the moment, TV owners are on a buying spree, but



Somewhere in the past 20 years the networks abdicated their responsibility as serious conveyors of news about national governance.

the Fox News Channel, both launched in 1996, was endless opinionating, blurring the line between journalists and politicians, reducing complexity to attack-counterattack, and, in the opinion of *Wall Street Journal* columnist Albert Hunt, having "an insidious impact, despite small audiences, in setting the tone for [Washington] coverage."

How It All Adds Up

After my two decades of media watching, are there blessings to be counted? The abundance of the media continues to amaze me. A rich menu of newspapers, magazines, radio, and television can satisfy the needs and prejudices of any person who has sufficient time and money. Magazines of opinion are reviving, as are magazines of niche interests. If I can't stand Bill O'Reilly on Fox, my nonpremium cable service offers 56

journalists today have graduate degrees and nearly two-thirds did their undergraduate work at the nation's most highly selective colleges and universities. Advances in bringing minorities into the national press corps have not been adequate, but the share of women has doubled, from 20 percent in 1978 to 40 percent today.

Rearranging Washington assignments from the traditional mode of "covering buildings" to theme journalism is a mixed blessing. Covering national security as opposed to the Pentagon, economics rather than Treasury—and doing it well—takes more time, talent, and money than news organizations are usually willing to commit. When the end-product of this new journalism is good, it wins prizes, but more often it's simply superficial.

The news media may never get the

they too may ultimately seek concentration. (Unfortunately, the motivation for tighter geographic groups is to cut costs, not produce better information.)

During a course that veteran journalist Richard Reeves was teaching at the University of Southern California, he was asked to define "real news." "The news you and I need to keep our freedom," he replied. But for most Americans, whose news comes from local and network television, less often from local newspapers, it is news that pays little attention to municipal government other than the fire and police departments, that turns its back on state government, and that increasingly finds the margins of national government more interesting than the core. How then to grade the media's coverage of our federal system of government? Incomplete would be a generous grade. ■

Responding to Official

From the Watergate crisis that led to the resignation of Richard Nixon in 1974 to the demise of the Independent Counsel Act last June, the nation conducted a quarter-century experiment involving official misconduct and the criminal justice system. The primary question was whether the public can have confidence in the criminal justice system if the attorney general is responsible for investigating and prosecuting high officials of his or her own presidential administration. The answer—thought to be no—spawned a host of detailed procedural questions about the mechanism for appointing outside counsel, about their work, and about controls on them.

The experiment also raised a larger question. Were a growing number of issues about public affairs and public officials being routinely routed through the criminal justice system when they could more sensibly be handled otherwise? Should, for example, issues in the Reagan-era Iran-Contra affair have been treated as foreign policy questions for elected officials to debate rather than crimes for prosecutors to investigate? In the cases of Bill Clinton's Agriculture Secretary Mike Espy, accused of receiving gratuities from regulated companies, and Housing Secretary Henry Cisneros, charged with making false statements during his nomination process, should the political sanction of removal from the cabinet have been sufficient given the nature or degree of their misconduct? For the criminal investigation into

whether President Clinton committed perjury during a civil deposition, should civil contempt sanctions (as ultimately occurred) in the civil case have been the preferred alternative from the outset?

This issue was raised directly by a bipartisan project sponsored by Brookings and the American Enterprise Institute and chaired by former Senate leaders Bob Dole and George Mitchell. The project issued a report recommending procedures for appointment of special counsel by the attorney general, to take effect after the Independent Counsel Act expired. But it also noted that "a vital part of the task of enhancing long-term public confidence in the criminal justice system, as it applies to high officials, lies in reexamining what that system is asked to do. We believe that too often our political process turns to the criminal justice system to accomplish tasks that are more suitably addressed in other ways. Civil or administrative enforcement of laws that apply to public or campaign officials, or political accountability through congressional or electoral processes, may provide the most fitting responses to many breaches."

Michael Davidson is the former Legal Counsel of the U.S. Senate. Elaine W. Stone is Special Counsel to the law firm of Covington & Burling, Washington, D.C. Davidson was counsel, and Stone associate counsel, to the AEI-Brookings Project on the Independent Counsel Statute.

Who Should Respond to Official Misconduct Charges?

This is an opportune moment to pursue that discussion. Because no one now knows who will control the executive branch after the 2000 election, broader issues can be discussed without appearing to favor a particular president or party. In this moment of comparative quiet, it is possible to begin, at least, with a basic question about inquiries into the conduct of public officials. To what ends should those inquiries be conducted? The answer to that question could help determine who should conduct them.

Misconduct

Where Should Responsibility Lie?

By Michael Davidson and Elaine W. Stone

One caveat. Although the Constitution assigns some responsibilities exclusively to one or another branch of government, in general our legal and political system resists rigid institutional assignments. In evaluating where to lodge responsibility for an inquiry, it is better to think of guideposts rather than barriers or mandated sequences. Our branches of government, in combination with a vigorous press, often interact and pass initiative from one to another. The press may expose a matter sufficiently to stimulate congressional inquiry, which may in turn lead to a

criminal investigation. Or a criminal investigation may spur other inquiries. In some situations, more than one institution may have a legitimate avenue to explore. In others, it is worth questioning whether multiple, overlapping inquiries, with their cost in time, resources, and burden on the participants, serve the public good.

Inquiry by the President

When should the president, aided by inquiries within the executive branch, have principal responsibility for responding to possible official misconduct?

Some critics faulted the independent counsel system for diluting the president's responsibility over his branch by requiring judicial appointment of prosecutors and by insulating prosecutors from effective executive branch control. The constitutional pedigree of that argument goes back to the Constitutional Convention of 1787, when the framers rejected a proposal to establish a plural executive (essentially a committee of three members) who would share the executive power. Instead, they provided that "the executive Power shall be vested in a President of the United States of

America,” a single person. Delegates to the convention who favored a single executive emphasized that placing the executive power in one person would enhance “responsibility,” which would be diminished in a plural executive.

One area of special presidential responsibility is over the principal officers of government who make up the president’s cabinet. The impeachment of President Andrew Johnson was fought over the power of Congress to use the Tenure of Office Act of 1867 to insert the Senate into the process for removing holdover members of Lincoln’s cabinet. The court’s later invalidation of an 1876 replica of that act was based in part on “the political responsibility thrust upon the President” by the Constitution that enables him to remove appointees “[t]he

oftener act in such a manner as to make him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment.” Here, placing prime responsibility on the president to insist on accountability accords comfortably with the Constitution’s design. While Congress cannot oust a cabinet official by a “no confidence” vote, the president can—by a vote of one.

In circumstances where official misconduct is systemic, as in the 1920s Teapot Dome affair, the size and extent of the corrupt personal gain and public harm may necessitate a range of corrective measures. There, demanded resignations, congressional inquiries, criminal prosecutions, and civil litigation were usefully combined to put matters right,

vision expressly grants Congress the power to investigate, the Court has held unequivocally that “the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). That proposition leads to the central question whether the subject of a congressional inquiry is “one on which legislation could be had.” *Id.* at 177. Within those wide parameters, the Court has found that investigations may include “surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). Outside those parameters, the lawmaking branch has powers that go beyond passing laws,



L. TO R.: DIRK HALSTEAD/GAMMA; J. L. ATLAN/SYGMA; JEFFREY MARKOWITZ/SYGMA; IRA WYMAN/SYGMA; TORE BERGSAKER/SYGMA

moment that he loses confidence in the intelligence, ability, judgment or loyalty of any one of them.” *Myers v. United States*, 272 U.S. 52, 133–34 (1926). Although the president’s removal power has since been limited in the case of various independent agencies or officials, that power was fully applicable to every executive branch official for whom an independent counsel was named during that system’s life.

The importance of confidence in an appointee’s “judgment,” to use the court’s word, and the harm to the president and to the public from the loss of it, help identify the president’s responsibility to act in response to possible misconduct by officials over whom he has removal power. In those circumstances, the main imperative may not be remedial legislation or punishment through prosecution. As Alexander Hamilton wrote in *The Federalist*, No. 70, “Man, in public trust, will much

seek punishment of offenders, and restore confidence. But when, as with some independent counsel inquiries, the gist of the matter is more individual than systemic—one person’s lack of candor within the executive branch or another’s indifference to conflict of interest standards or other ethical norms—removal from office by the president might suffice. Indeed, in such cases, there may be good reason to frame the issue as ethical accountability rather than criminal liability, lest acquittals or plea bargains in un compelling cases blur a needed message about ethics that could be forcibly delivered by removal.

Inquiry by Congress

The Supreme Court, drawing on American history before and after the Constitution was adopted, has identified broad boundaries for investigations by Congress. Although no constitutional pro-

such as the Senate’s advise and consent powers for nominations and treaties, the power of each House to discipline its members, or the power of the House to impeach. Each may require investigations into facts.

The Court has noted that “[m]ost of the instances of use of compulsory process by the first Congresses concerned matters affecting the qualification or integrity of their members or came about in inquiries dealing with suspected corruption or mismanagement of government officials.” *Id.* at 192. For the latter, the Court has made clear that the power of Congress to investigate also “comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.” *Id.* at 187.

Yet there are important limits on the power of Congress to investigate. Implied constitutional limits accompany the implied power of inquiry: “broad as

is this power of inquiry, it is not unlimited." Congressional committees have "no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress." As the Court has elaborated, "No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." *Id.*

How may these principles guide congressional decisions whether to undertake investigations into possible misconduct of executive officials or to defer, at least temporarily if not completely, to a president's administrative handling or to a criminal prosecution?



Some of Congress's "probes into departments of the Federal Government to expose corruption, inefficiency or waste" may result in legislation. Others may induce the president to take corrective action. In either event, as captured by the Court's phrase, "probes into departments," the powerful tool of congressional inquiry usually works best when used to bring to light systemic, not individual, misconduct. Congressional responsibility to investigate is certainly indicated when issues about the misconduct of high officials indicate a deficiency in standards, or in systems to implement them, that may warrant remedial legislation.

Inquiry within the Criminal Justice System

The ambit of federal prosecutors is narrower, by far, than the power of Congress to investigate. Their role also serves a different purpose than the president's

power to remove unfaithful executive branch officials. Although they are under executive branch aegis, prosecutors are governed by special norms that include the nonpolitical values of the judicial branch in which grand juries function and trials take place.

Where do inquiries by prosecutors fit within the spectrum that includes presidential inquiries and the power of Congress to investigate? Of course, apart from special issues relating to the president while serving in office, our legal traditions make clear that executive branch officials may be held criminally accountable for their misdeeds. The Constitution's impeachment clause specifically instructs that officers of the United States who are convicted by the Senate upon impeachment by the House shall "nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

Prosecutors do not correct failures of political responsibility or ethical lapses within the executive branch. Nor do they establish records for remedial legislation by Congress or report to the public, as commissions or congressional committees might. Indeed, the public reporting responsibility of independent counsels was a major ground for criticism of that law.

As for subject matter, while Congress may inquire into any subject on which legislation *might* be had, prosecutors inquire only into subjects on which legislation *has been* had. And they may inquire only into matters for which Congress has already provided a criminal law remedy. They do not have to begin with knowledge that an offense has been committed or that a particular person has committed it. Using the power and function of the federal grand jury, prosecutors may "inquire into all information that might possibly bear on its investigation until [the grand jury] has identified an offense or has satisfied itself that none has occurred." *United States v. R. Enterprises*, 498 U.S. 292, 297 (1991). Still, while their net may be cast wide, the ultimate question for prosecutors is whether an offense has occurred (and, of course, who the offender is), which

limits prosecutors to subjects established in law.

However, a determination that a matter *may* be prosecuted does not always mean it *should* be prosecuted. How should that judgment be made? In choosing whether to pursue criminal charges, prosecutors must exercise discretion, the curtailment of which was a prime deficiency of the Independent Counsel Act. With the act's demise, our federal criminal justice system will again rely on federal prosecutors, with ultimate responsibility in the attorney general, to decide whether to prosecute high officials. As ever, their judgment should be informed by law and experience, by proportionality, by competing demands for time and resources, and by common sense.

To a large extent, prosecutors may be disinclined to include in that calculus whether Congress has taken the initiative to investigate or whether the president has used his removal power to address an official's misconduct. The public interest, however, may well be served by a broad view that considers whether the United States as a whole (which as the courts have recognized is a sovereign consisting of three branches) has rectified a public problem through the action of one or several of its branches. Without taking sides on any one of these issues—political corruption in Watergate; misuse of foreign affairs powers in Iran-Contra; campaign financing in the last election; or, most recently, possible failures to disclose in Waco, including between components of the Department of Justice—one can fairly question whether the public's overriding interest lies more in a public inquiry that forms the basis for remedial action for times ahead than in an adjudication of criminal charges.

The Next Time

All of which is to say that when the next scandal is upon us—and the cry is "fire him," "appoint a committee to investigate her," "prosecute them," or all of the above—it would be worth pausing for a moment to ask two important and related questions. What are our objectives? Which of our institutions is best suited to attain them? ■

"A Surplus, If We

How the Federal Budget Surplus Happened

By Allen Schick

much to do with liquidating the deficit as the economy's invisible hand. Policies matter.

Wrong decisions in the 1980s condemned the nation to a decade of high deficits; right ones in the 1990s have liberated it from past budgetary misdeeds.

"It's the economy, stupid."

The battle cry of Bill Clinton's 1992 presidential campaign has been recycled to explain how a \$290 billion budget deficit has been transformed into a \$100 billion surplus that is expected to quadruple in the decade ahead. I would argue, however, that the hand of Washington has had as

Liquidating the deficit ranks as one of the supreme budgetary accomplishments in American history. In 1993, the Office of Management and Budget projected that the fiscal 1998 deficit would be \$339 billion; the Congressional Budget Office projected \$357 billion. That was not the only year for which budget experts were wide of the mark. In both their five-year projections and their annual budget estimates, OMB and CBO persistently overestimated the deficit. In 1993, CBO projected that policies then in place would yield cumulative deficits of \$1.5 trillion over the next five years. Actual deficits totaled less than a third that.

An analysis of economic perfor-

Allen Schick is a visiting fellow in the Brookings Governmental Studies program. He is the author of The Federal Budget: Politics, Policy, Process (Brookings, 1995; revised edition forthcoming). Felix LoStracco provided assistance.

Can Keep It"



mance, spending policies, and revenue trends during the 1980s and 1990s makes clear how the federal budget was balanced. Whether it will still be balanced a decade from now when the first wave of baby boomers reaches retirement is much less certain.

The Economic Boom

Every budget is hostage to the economy. Congress and the president cannot balance the budget when national output is declining and unemployment is soaring. Budget receipts are highly sensitive to changes in economic conditions, spending less so, but even a small shortfall in economic performance can affect the budget in a big way. CBO has estimated that if the annual real growth rate over the next decade were just 0.1 of a percentage point less than it has assumed, the fiscal 2010 budget surplus would be \$40 billion below current projections.

When the deficit peaked in 1992, the United States was emerging from a brief recession. When the budget was balanced in 1998, the economy was completing the seventh consecutive year of growth, during which 13 million jobs were added and inflation averaged less than 3 percent. The budget was the beneficiary of economic success. Revenues escalated as corporate profits and

personal incomes rose; spending dropped as welfare rolls declined, the crisis in the banking sector was resolved, and inflation in the health care sector moderated.

But economic good times alone do not account for the budget's unexpected turnaround. Measured in terms of growth rates, the eight consecutive years of expansion during the 1980s (from the end of the Reagan-era recession in 1982 to the onset of the Bush-era recession in 1990) outperformed the boom of the 1990s (see table 1). The two expansions were structured differently, which may partly explain their different revenue impacts. During the 1980s expansion, which followed a decade of "stagflation," growth began at a high rate and tapered off. The 1990s expansion, which followed a long period of growth that was briefly interrupted by the 1990–91 recession, began with low growth that accelerated as the expansion continued.

Spending Policies

Although a cooperative economy made the budget surplus possible, the surplus would not have materialized if budget policy in the 1990s had repeated the mistakes of the 1980s. Differences between the revenue and spending paths

taken during the two decades led to quite different budgetary outcomes.

On the spending side of the ledger, the key differences were in budget enforcement rules, defense spending, discretionary appropriations, and entitlements.

During the 1980s, Washington postured against deficits with futile gestures that reflected the inability of a Republican president and Democratic Congress to agree on tough budget measures. The 1985 Gramm-Rudman-Hollings (GRH) law promised annual cuts in the deficit and a balanced budget within six years. Although the law threatened the automatic cancellation of budget resources if the projected deficit exceeded the target, the actual deficit was above the statutory limit every year. With clumsy and unworkable sequestration procedures, GRH induced Congress and the president to lie about the deficit by substituting illusory cuts for real ones and by pretending that the budget picture was better than it actually was.

In 1990, with the projected deficit spiraling out of control, the warring branches replaced GRH with the Budget Enforcement Act (BEA), a law that focuses on revenue and spending rather than the size of the deficit. Almost a decade later, BEA remains in effect, and although it has not always been strictly

Table 1. Economic Performance, 1983–90 and 1992–99

ECONOMIC INDICATOR	1983–90	1992–99
Average real GDP growth rate ^a	4.0	3.5
Average annual civilian unemployment rate ^b	6.7	5.7
Total civilian jobs added (millions) ^c	18.0	15.1
Cumulative increase in real per capita disposable income ^a	20.5	14.1
Average annual change in consumer price index ^{b,c}	3.9	2.6
Average ten-year Treasury note rate ^b	9.5	6.2
Cumulative increase in productivity ^d	12.5	13.3

Sources: *Economic Report of the President*, January 1999; Bureau of Economic Analysis (November 1999); Bureau of Labor Statistics (November 1999); and Treasury Department (September 1999). Data are through preliminary September 1999, except for average ten-year Treasury note rate, which is through June 1999.

a. Based on chained 1996 dollars.

b. Calendar year average.

c. For all urban consumers.

d. Output per hour of all persons in business sector.

enforced, it has helped improve the budget condition. It has two principal rules—a limit on annual appropriations and a requirement that any revenue or spending legislation that would increase the deficit (or decrease the surplus) must be offset. In sharp contrast to GRH, it does not regulate changes in the budget caused by fluctuations in economic conditions or in the cost of existing entitlement programs. It controls only the parts of the budget that the president and Congress directly influence—and thus holds politicians accountable only for the things they control.

Congress and the president have had a complicated budgetary relationship under BEA. At times, one branch has deterred the other from violating the rules; at other times, both have conspired to evade the rules by designating routine expenditures as emergencies, manipulating the effective dates of tax legislation to hide the full budgetary impact, and using a bewildering variety of bookkeeping tricks. BEA has elevated “scoring” (measuring the budgetary impact of legislation) to a valued political art, but it also has dampened the ability of vote-seeking politicians to cut taxes or boost spending. As with other

budget rules, its effectiveness has weakened over time as claimants for federal money have devised means to outwit the process or disable its controls. Hefty surpluses have also weakened BEA. Budget controllers cannot enforce the rules with the same zeal when money is abundant as they can when resources are tight.

Discretionary Spending

It is difficult to separate the impact of BEA from the conditions under which it has operated. Had there been no discretionary caps, defense spending still would have been held down by changes in world affairs, domestic spending pressures, and oversize deficits.

The 1980s began with a steep boost in defense spending; the 1990s, with the collapse of the Soviet empire and the end of the Cold War. Defense spending, which began to level off during the second half of the 1980s, continued to fall through most of the 1990s. Adjusted for inflation, defense outlays were almost \$100 billion less in 1998 than they had been a decade earlier. If the Cold War were still raging, there probably would be no surplus.

As after past wars, some defense savings were reallocated to domestic pro-

grams. Because the budget enforcement rules built a “firewall” between discretionary appropriations and direct spending, domestic appropriations reaped most of the savings. These programs, which fell more than 15 percent during the 1980s, grew more than 25 percent during the next decade. In fact, real discretionary domestic spending is much higher today than it was when Ronald Reagan launched his campaign to roll back social programs. As a share of gross domestic product, however, discretionary domestic spending has fallen—from 4.5 percent in 1981 to 3.2 percent in 1999.

During the 1990s, the president and Congress exploited BEA spending caps to demonstrate their commitment to control the budget and to reduce the size of the government while spending somewhat more than the BEA rules intended. Led by Clinton, the Democrats came out ahead in this contest; they got credit for fiscal prudence while securing more money for popular programs. Outmaneuvered, congressional Republicans reluctantly approved the increases, sometimes after getting billions more for defense. But the marginal growth in discretionary appropriations was too small to derail the march to a balanced budget.

Direct Spending

Spending growth in entitlements was held down during the 1990s by the BEA pay-as-you-go rule requiring legislated increases in these programs to be offset by cuts in other direct spending or by revenue increases. But even in the absence of PAYGO, big deficits would probably have inhibited the president and Congress from establishing new entitlements and impelled them to seek savings in old ones. After all, few initiatives made it though Congress during the pre-BEA 1980s. And despite PAYGO, Clinton won some new entitlements, such as the children’s health insurance program enacted late in the 1990s.

The PAYGO decade did see some publicized cutbacks, though their net effect on federal spending has probably been small. Medicare was nicked repeat-

edly, with some of the claimed savings used to offset the cost of benefit enhancements. At the century's end, Clinton transformed the Medicare debate from worrying about the coming retirement boom to adding prescription drugs to the list of eligible benefits. Welfare was converted from an open-ended entitlement to a fixed block grant to states, and changes were made in eligibility rules and program benefits to move recipients from welfare to work. When the reforms were enacted in 1996, a six-year savings of \$54 billion was projected. Steep, largely unexpected declines in welfare rolls—6.5 million fewer recipients in 1998 than 1993—boosted short-term federal spending above what it might have been had the old AFDC program continued. Nevertheless, over the longer term, welfare spending will decline if the reforms endure. Congress also overhauled farm price supports in 1996, but the projected savings will probably not materialize. Whenever farmers run into trouble, politicians pour in billions of dollars of emergency money.

All told, the 1990s were a fiscally static period in entitlement policy. Leaving aside deposit insurance, mandatory spending was a higher share of GDP in 1999 than in 1990. Means-tested entitlements grew the most, both because of new legislation (such as increases in the earned income tax credit) and because of built-in growth in old programs.

Tax Policy

If the economy and spending changes do not adequately account for the surplus, the only other place to look is on the revenue side of the budget. During the 1990s, tax policy largely reversed actions of the previous decade. During the 1980s, the highest marginal tax rate (50 percent on earned income and 70 percent on unearned income—interest and dividends) was reduced to 28 percent (or 31 percent if a “bubble” in the rates is included). But in the 1990s, the rate was boosted to 39.6 percent, and with various phase-outs of exemptions and deductions included, the effective rate is now above 40 percent. The first tax increase was enacted in 1990 when

George Bush was president; the second in 1993 when Bill Clinton was in the White House. The first deprived Bush of reelection; the second helped the Republicans take over Congress in 1994 but ultimately aided Clinton's reelection. While politically risky, the tax increases pumped up federal revenues. Federal receipts rose from 18.2 percent of GDP in 1990 to 20.5 percent in 1998, adding \$190 billion in revenue. If the 1989 tax structure were still in place, there would be no surplus to discuss.

The targets of the 1990 and 1993 rate hikes were upper-income taxpayers. By contrast, during the 1990s the income tax burden on low-income Americans was greatly eased. Because of the widened income gap between low and high earners, the government took in much more revenue than it would have if the tax increases had been spread evenly across income brackets. The government taxed the winners during the 1990s, redistributing income while boosting its revenues. By design or accident, sound social policy coincided with responsible budget policy.

Will the Surplus Persist?

Anyone who has made or used budget projections during the 1990s should be exceedingly guarded in forecasting the budget future. Although the medium-term (five to ten years) outlook is cloudy, the longer-term forecast is clear. Under current policy, the budget will incur large and growing deficits when the surge in the over-65 population forces the Social Security fund to draw down the trillions of dollars of accumulated surpluses.

The sure prospect of resurgent deficits makes it urgent that policy mistakes not imperil the surpluses projected for the first decade of the new millennium. Last July CBO estimated that annual budget surpluses would rise from \$161 billion in 2000 to \$413 billion in 2009. If the forecasts are right, Washington would accumulate almost \$3 trillion in surpluses during the next decade—two-thirds in Social Security funds, the rest in the general fund. Although the projected surpluses are enormous, the

economic and revenue assumptions on which they are based are modest. The CBO does not build a recession into its forecast, but it assumes that the economy will grow only 2.4 percent a year over the next decade—much more slowly than it has in the recent past. It also expects federal revenues to rise only \$75 billion a year during the next five years, as opposed to the almost \$115 billion averaged during 1993–98.

The weakest part of the CBO projection is the assumption that discretionary spending (capped through fiscal 2002) will remain tightly in check. The recent actions of Congress in evading the caps for fiscal 2000 appropriations make it highly unlikely that this part of the budget scenario will play out according to the CBO script. Responding to real and imagined emergencies, boosting defense spending (something Democrats and Republicans alike support, though they differ as to how much), raising discretionary domestic appropriations in line with price increases, and adding billions here and there for national priorities such as education would consume almost three-quarters of the projected non-Social Security surpluses. If, as is likely, taxes are also cut, the remainder of the surplus would be at risk.

These possibilities counsel two prudent steps on the part of Washington politicians: do not spend the surplus before it is earned and do not repeat the policy mistakes of the early 1980s. Prudence in fiscal management cannot ensure that surpluses will persist, but it can guard against a return of runaway deficits.

The 2000 election may have much to say about the future budget health of the nation. Divided government has blocked Republican ambitions for large tax cuts and deterred Democrats from big increases in social spending. If either party were to win all the national political sweepstakes in 2000, it would have a clear field to pursue its pent-up budgetary agenda. Perhaps the surprising lesson of the conversion of deficits into surpluses is that fiscal prudence can reign when neither party can achieve its budgetary vision. ■

Looking for Lea

Domestic Politics and Foreign Policy

The end of the Cold War relaxed tensions in Europe without bringing harmony to Washington. American foreign policy is, if anything, more contentious today than it has been in 60 years. Whether it is Russia, peacekeeping, chemical weapons, trade, the United Nations, China, foreign aid, global warming, or arms control, almost no policy enjoys broad support. Officials at both ends of Pennsylvania Avenue routinely complain that foreign policy-making has broken down and badly needs repair.

Attempts to explain this discord typically, and mistakenly, blame an isolationist public and Congress. Among the public, the problem is not antipathy toward international engagement but apathy. Most Americans see little to worry about abroad even as they continue to favor engagement in world affairs. The public's apathy toward foreign affairs would be unimportant, perhaps even a blessing, if Washington agreed on what should replace containment as the central organizing principle of American foreign policy. But it doesn't. Instead, elites argue over what America should do in a world in which its engagement is based on opportunity rather than fear. It is this combination of public apathy and elite dissensus, not a yearning for Fortress America, that has made foreign policy-making so contentious.

Short of the appearance of a Soviet-style threat, neither of these underlying dynamics is likely to change. As a result, the central task of foreign policy governance is to prevent political differences from overwhelming fairly broad public and elite support for American engagement in world affairs. Success ultimately rests with the president. Today more than ever, presidents need to mobilize public opinion and to manage relations with Capitol Hill. If presidents fail to recognize that winning foreign policy coalitions need to be built rather than assumed, the result will be legislative gridlock and an incoherent foreign policy.

James M. Lindsay is a senior fellow in the Brookings foreign policy studies program.

Are Americans Embracing Isolationism?

For a decade now journalists and political commentators have warned about resurgent U.S. isolationism. While the claim that Americans are, to borrow Arthur Schlesinger's colorful phrase, seeking to go "back to the womb" makes for good copy, scant evidence supports it. Public opinion polls repeatedly find that substantial majorities of Americans favor an internationalist foreign policy. For example, when the Chicago Council on Foreign Relations surveyed Americans in late 1998, it found that 61 percent of those polled agreed that it "will be best for the future of the country if we take an active part in world affairs." Although the share was down 4 percentage points from 1992, it was up 7 percentage points from 1982, and well within the range that such questions have elicited since they were first asked back in 1947.

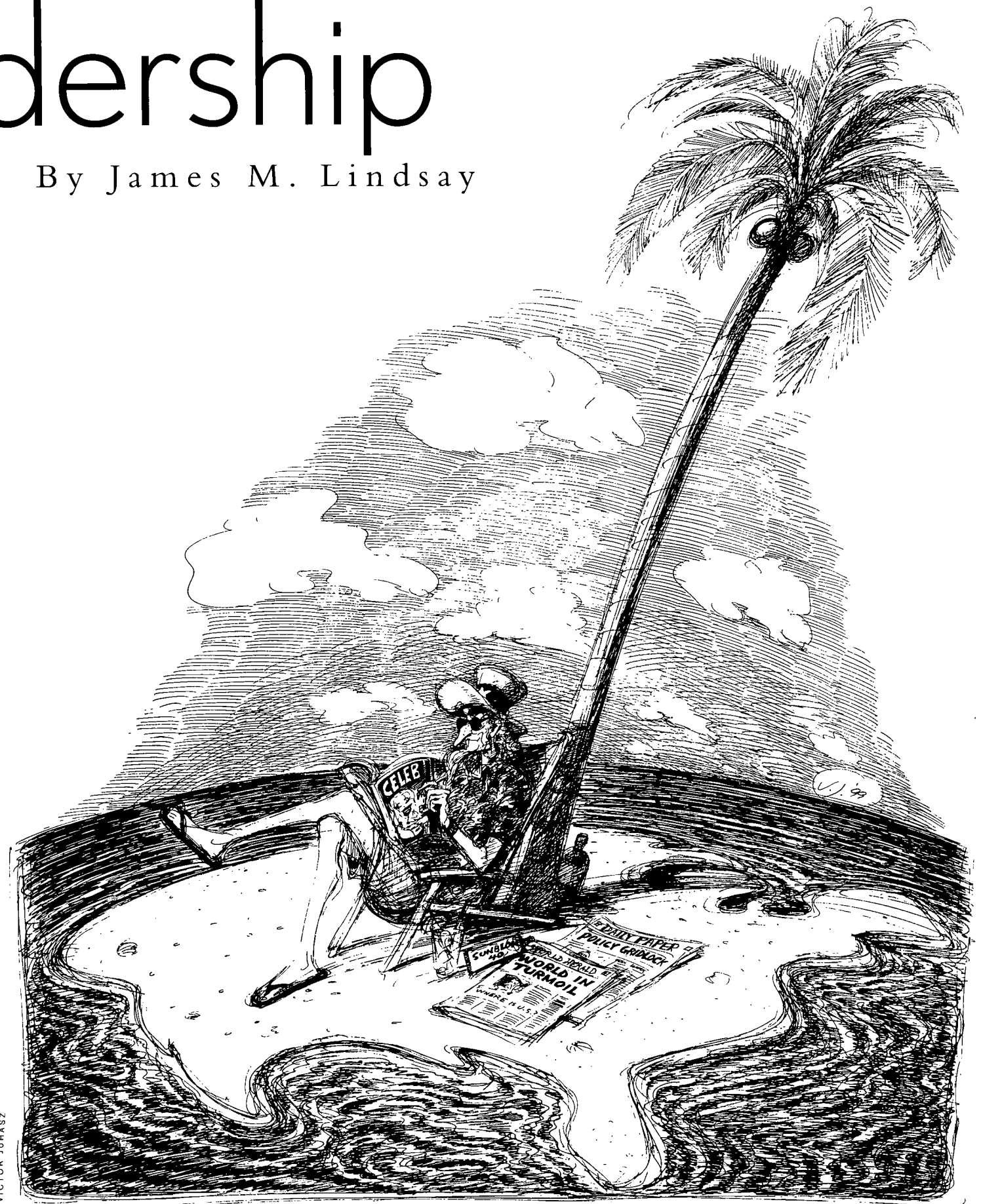
The public's refusal to return to the womb can also be seen in its reaction to the Kosovo war. According to Gallup, public support remained above 50 percent over the course of the air campaign, even though it quickly became clear that the Clinton administration had badly misjudged Serbian resolve. A majority of the public did oppose sending combat troops to Kosovo—hardly remarkable given that President Clinton initially ruled out sending ground troops. More telling is that four out of ten Americans nonetheless supported sending troops.

The strength of the internationalist pull on the American public can also be seen in presidential politics. For all the talk about isolationism, it has fared poorly on the campaign trail. Presidential candidates, who have a strong incentive to tell voters what they want to hear, mostly avoid taking isolationist positions. Two who haven't, Ross Perot and Pat Buchanan, saw their popularity fall rather than rise during the 1990s. Indeed, Buchanan's recent defection from the Republican to the Reform Party is an admission that his mix of isolationism and social conservatism is a losing formula.

Americans remain broadly internationalist because internationalism has deep roots in American society. Most adult Americans came of age when internationalism was a given and isolationism a relic of the days of top hats and canes. Such ingrained

Leadership

By James M. Lindsay



political attitudes are difficult to break. After all, it took two world wars to discredit isolationist policies and push the United States firmly into the internationalist camp. Thus far, no event has destroyed the rationale for an activist foreign policy. As badly as the Clinton administration handled the deaths of 18 Army Rangers in Mogadishu in 1993, Somalia is not Pearl Harbor.

At the same time, internationalism remains a relatively low-cost policy that demands little of individual Americans in terms of either blood or treasure. Very few Americans have died in foreign adventures over the past decade. Spending on foreign affairs accounts for only about a penny out of every federal dollar. And most Americans recognize that defense spending provides jobs as well as security.

Finally, while globalization may be creating losers in the U.S. economy, it is also creating winners with a stake in an internationalist foreign policy. The Farm Belt provides a good example. For much of the 20th century, the Midwest was home to isolationism. The sizable growth in farm and farm-related exports changed that. Now the financial health of Iowa hog farmers and Nebraska grain growers depends on prosperity in Jakarta and Tokyo, a point the Asian financial crisis drove home. Not surprisingly, many Midwestern members of Congress have become ardent internationalists, figuring prominently in efforts to increase the U.S. contribution to the International Monetary Fund and to rein in the use of economic sanctions, among other legislative battles.

Although Americans remain broadly internationalist and probably will for years to come, their interest in foreign affairs has waned. When asked to name the most important problem facing the country today, Americans overwhelmingly mention domestic issues. Nor do most Americans have well-formed opinions about the country's foreign affairs priorities. When the Chicago Council on Foreign Relations asked people in 1998 to name the "two or three biggest foreign-policy problems facing the United States today," the most common response by far, at 21 percent, was "Don't Know."

The "Don't Knows" predominate because few Americans follow foreign affairs. Take, for example, Kosovo. The Clinton administration began to threaten to use force against Serbia in mid-1998. The threats received prominent media coverage. Yet even as late as February 1999, as the Rambouillet conference convened, the Pew Research Center for the People and the Press found that only one out of nine Americans said they followed U.S. policy on Kosovo "very closely." Six out of ten said they followed the story "not too closely" or "not closely at all."

The public's lack of interest in foreign affairs

may be lamentable, but it is not unreasonable. The United States enjoys unrivaled political, economic, and military power. No major challenge to U.S. security exists. While experts warn of threats looming on the far horizon, Americans embrace Calvin Coolidge's advice: "When you see ten troubles rolling down the road, if you don't do anything, nine of them will roll into a ditch before they get to you."

Is Congress Isolationist?

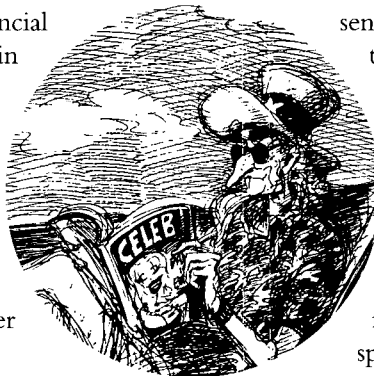
The American public may not have turned isolationist, but has Congress? Stephen Kull and I.M. Destler say yes in their important book, *Misreading the Public*. But has a gap in fact developed between an outward-looking public and an inward-looking Congress?

To be sure, isolationist voices are louder now on Capitol Hill than they have been for more than 50 years. Unlike the Cold War, when identification with isolationism could be an electoral kiss-of-death, some members of Congress proudly embrace the America-first banner. Moreover, isolationist sentiment cuts across party lines. Republicans lead the push to cut foreign affairs funding, and Democrats oppose efforts to give the president fast-track authority for negotiating international trade agreements.

Nevertheless, isolationists remain a minority in Congress and in both political parties. Cuts in international affairs funding owe less to isolationism and more to intense pressure to find politically painless ways to cut federal spending, the well-documented shortcomings of America's foreign aid programs, and the absence of a compelling rationale for aid in the absence of the Soviet threat. Congressional efforts to force reform on the United Nations gained traction less because members wanted to turn their backs on the world than because of widespread agreement that it is a poorly run organization. The effort to ratify the Comprehensive Test Ban Treaty failed not because of isolationist opposition but because prominent internationalists, including six former secretaries of defense, argued that it hurt U.S. interests.

At the same time, many congressional foreign policy debates carry a decidedly internationalist cast. However unwise it might be to expand NATO, to impose sanctions on countries that violate religious rights, to terminate aid to countries that acquire nuclear weapons, to recognize Tibet as a sovereign country, to encourage Taiwanese independence, and to punish countries that trade with Cuba and Iran, these are not proposals aimed at disengaging the United States from world affairs.

The crux of the many conflicts today between the White House and Capitol Hill, then, is not whether the United States should be involved



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abroad but rather how and to what end. The truth is that 10 years after the fall of the Berlin Wall, elite opinion on foreign policy remains fractured. Disagreement persists on both policy diagnosis and prescription. Is China a strategic partner or an emerging threat? Is Russia the issue of the past or the future? Should the United States act multilaterally or unilaterally? Will engagement promote human rights or help perpetuate dictatorial regimes? Much like friends who agree to dine out but can't agree on a restaurant, foreign policy elites agree that the United States should do something, just not what.

Congress naturally reflects this dissensus, which makes it difficult for the institution to function. Divided by chamber, party, ideology, region, committee, and generation, Congress lists toward paralysis whenever a modicum of agreement and a sense of proportion are absent. The public's apathy about foreign policy only encourages this. When members gain more freedom to debate, they are more receptive to narrow interests and face less pressure to compromise. Policy coherence can suffer as a result.

Foreign Policy Governance for a Post-Cold War World

The central challenge of foreign policy governance today is to translate a general desire for American engagement in world affairs into practical policies. Doing that requires keeping legitimate differences over America's role in the world within productive bounds. Whether Washington will meet this challenge is by no means guaranteed.

One solution not to be hoped for is the emergence of a Soviet-style threat. Threats can produce agreement, but only at great cost. At the same time, the solution for which all could hope—a national debate that produces a consensus about America's role in the world—is not likely. The 2000 presidential election campaign provides the opportunity for such a debate, but public apathy and divisions within the two parties encourage candidates to avoid foreign policy issues. To the extent they do talk about the world abroad, candidates will be looking to allay voters' fears about their foreign policy competence rather than to rally them around a grand strategy. And anyone hoping that the end of divided government will bring peace to Pennsylvania Avenue should heed Representative Joe Scarborough's (R-FL) warning: "Any Republican president who expects the House members and probably the newer members of the Senate to merrily go along and rubber-stamp" his national security policies "will be very disappointed." The same sentiments hold true on the Democratic side of the aisle.

With no new foreign policy consensus likely to save the day, the key to avoiding foreign policy gridlock is political leadership. That leadership will not come from Capitol Hill. While Congress can respond to strong political leadership, it is institutionally incapable of providing it. That burden rests with the president. Indeed, presidential leadership is more important today than ever before. During the Cold War, presidents could take congressional and public support for granted. When a policy became controversial, they frequently carried the day simply by calling it "vital" to the national interest. A

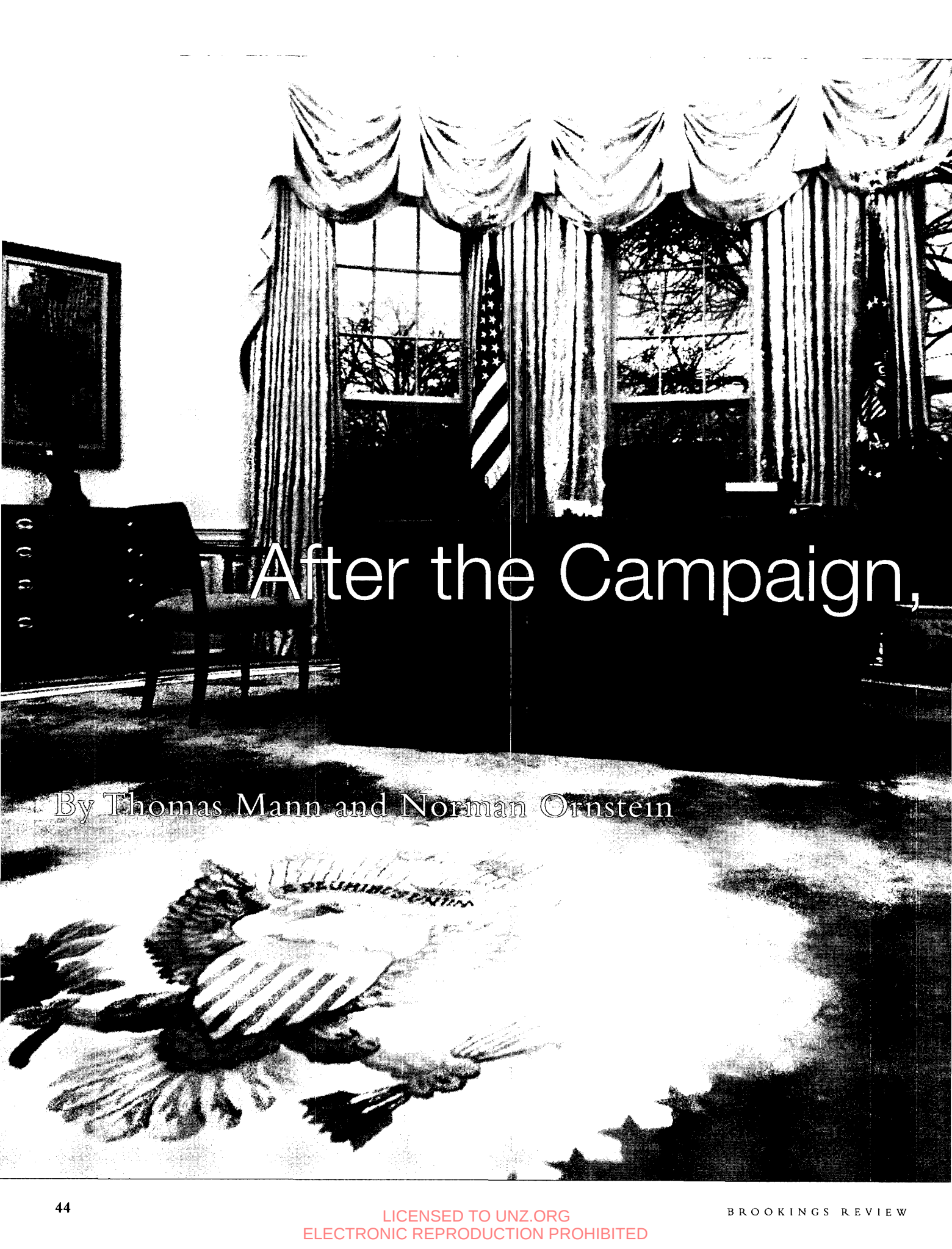
degree of presidential complacency was the result; unlike domestic policy, where their political skills were constantly tested, presidents to a great extent could command on foreign policy. No longer. Members of Congress are more divided than ever before, and they see less reason to give the president the benefit of the doubt. Presidents now must build winning political coalitions.

The ability of future presidents to build those coalitions rests on three things. First, presidents need to know where they want to go in foreign affairs. The greatest threat to a responsible American internationalism is not a fractious Congress or an apathetic public but a president for whom foreign policy is an afterthought. As Bill Clinton's first years in office attest, presidents who react to events abroad cede their institutional advantages to the legislative branch. Congress abhors a vacuum and will fill it, sometimes unproductively. Presidents cannot lead Congress and the country if they do not know where they want to go.

Second, as the fate of the test ban treaty illustrates, presidents and their advisers must begin making the case for their foreign policy priorities to the public and Congress before they become controversial. Presidents enjoy a considerable advantage in framing how the public and Congress think about issues. That advantage holds, however, only when presidents act early. With the 1995 Mexican aid package and the replenishment of the IMF reserves, for example, the Clinton administration moved slowly in defining the issue. Its opponents showed no such hesitancy, denouncing both proposals as "bail outs" of profligate foreigners and imprudent speculators. The label stuck, and the administration found itself running uphill. In foreign policy as in football, playing catch-up is always harder to do. Yet presidents and their advisers can take comfort from public opinion polls that make it clear that an internationalist majority exists out there to be mobilized.

Third, presidents and their advisers need to invest in personal relationships with members of Congress. Throughout the Cold War, executive branch officials typically ignored Congress until they faced a showdown vote. Then they couldn't consult enough. That strategy no longer works. The failed efforts to secure fast-track trade authority and to win Senate approval of the test ban treaty show that last-minute appeals to national security and calls for preserving presidential prerogative no longer move lawmakers. What complicates administration efforts to build ties to Congress is the sheer number of members who must be consulted. As the administration discovered with the battles over Mexican aid and UN arrears, congressional leaders frequently cannot deliver rank-and-file support for agreements they make. As a result, while proposals to formalize consultations between the president and the congressional leadership may do some good, they are a poor substitute for reaching out to a broad slice of the membership.

These three suggestions are not magic bullets. Without a national consensus on America's role abroad, foreign policy governance will always be fractious. Yet if presidents don't adapt their leadership styles to the changed conditions of post-Cold War America, foreign policy gridlock is inevitable. ■



After the Campaign,

By Thomas Mann and Norman Ornstein

Governance Questions for the 2000 Election

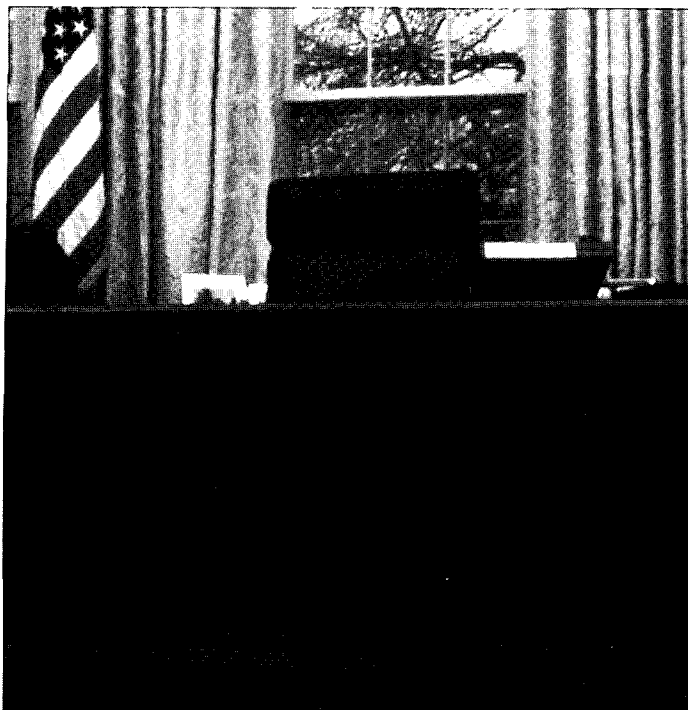
What?

We live in the age of the permanent campaign. Almost seven years into his presidency, Bill Clinton remains in full campaign mode, and a year before the 2000 election the presidential campaign is already many months old (some would argue it began in 1996, with Al Gore's speech at the Democratic Party Convention in Chicago). Campaigns are nonstop and year-round, and governing is intimately linked to the campaigns in a continuous loop. Campaign consultants move without pause from the campaign trail to work for the victorious elected officials, helping to shape their policy messages and frame issues for advantage in the next campaign. Legislative proposals, routinely subject to intense polling and focus groups before they are launched, are monitored by tracking polls thereafter. Outside groups run advertising campaigns that are indistinguishable from electioneering.

Private groups orchestrate legal challenges to laws they oppose, sue government and their adversaries, and use the discovery process to troll for politically embarrassing revelations about their opponents. Party leaders and other elected officials devote more and more of their energies to building campaign war chests, which both distracts from and shapes their governing responsibilities. Reporters increasingly cover policy battles in Congress and the White House as cam-

Thomas Mann is W. Averell Harriman Senior Fellow in the Brookings Governmental Studies program. Norman Ornstein is resident scholar at the American Enterprise Institute. They are collaborating on the Transition to Governing Project, funded by the Pew Charitable Trusts.

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paigns, with the focus on who is winning and losing and not on the stakes involved. Campaigning is governing is campaigning.

It was not always so. For most of American history, campaigns generally were confined to the latter half of election years, and when the campaign ended, the governing began—after a lengthy transition interval. Policymakers knew that campaigns could and often would be rough-and-tumble, even harsh, contests but accepted as a matter of course that once the campaigns were over, erstwhile adversaries would often be allies. Campaign bitterness was generally confined to one's opponent, not all the members of his or her party. The day after the election, campaign materials were put away, as Christmas lights are boxed and returned to the attic after the holidays, and the tools and personnel for governing emerged.

The Bad New Days?

America is not going to return to that bygone era. The hundreds or thousands of campaign consultants, public relations firms, political pollsters, issue advocacy organizations, party campaign committees, and congressional leadership campaign organizations will not disappear quietly or fade away. Journalists will not easily stop covering campaigns and policy negotiations alike as though they were horse races.

This is not to suggest that everything about our political process in earlier days was good, much less that everything about today's politics is bad. The permanent campaign has not kept Americans from throwing incumbent administrations out of office, showing their displeasure with policy directions, and signaling their desire for change. But we have paid a price for the transcendence of campaigning over governing. One part of the price has come in public cynicism and disengagement. Less than half the voting-age population cast a ballot in the last presidential election, almost 14 percentage points below the

turnout in 1960. Moreover, the youngest cohorts' striking disengagement from politics promises even lower turnout rates in the future.

Contemporary election campaign practices, including attack ads with nasty, inaccurate, or unfair charges, have left millions of Americans manifestly dissatisfied with the electoral process and disposed to assume the worst about those who compete for their attention and votes. Media coverage of presidential campaigns, especially on local television news programs, has shrunk in recent cycles, and much of what is provided does little to engage or inform ordinary citizens.

Most importantly, campaigning seems increasingly antithetical to governing. Parties and individual officeholders routinely manipulate the policy process to gain tactical advantage in the next election. And candidates often frame campaign themes and take positions in ways that frustrate rather than facilitate the task of governing after the election. Campaigning intrinsically is a zero-sum game, where there is a winner and a loser. Governing ideally is an additive game, where a broad policy coalition lets many on all sides declare victory. The more campaigning absorbs governing, the more difficult coalition-building becomes.

Candidates who fail to m

Combating Public Cynicism

Widespread criticism of campaign practices and coverage has prompted a good deal of soul-searching within the media and efforts by reform groups to improve public deliberation in presidential elections. But changing today's system will require more than pious exhortation. As the Task Force on Campaign Reform reported recently, "candidates want to win elections, journalists want to exercise their craft, media executives want to earn profits, citizens want to be informed and entertained and see the 'right' candidate win." Proposals for improving the practice and coverage of presidential campaigns must serve the interests of these key actors if they are to have any chance of being adopted and sustained.

The early stages of the 2000 presidential campaign provide some basis for encouragement that the dialogue will be fruitful. Despite plenty of horse race, campaign tactics, and scandal coverage during 1999—and ample cynicism and hype on the talk news shows—the press has already provided substantial information about the major candidates, including their backgrounds, records, and positions, and the major themes of their campaigns. They have also done a good job combing the policy agenda, as defined by both experts and ordinary citizens. A crucial test is whether they will be willing to repeat this information, in clever and insightful ways, when potential voters are paying more attention to the campaign.

But even if they do, something will be missing. Voters could well find this material about the candidates in more accessible and entertaining formats and still lack crucial information for making their decision. And presidential candidates could engage in a most impressive form of public deliberation on the issues and yet be utterly unprepared to assume the responsibilities of office and put in place a realistic plan for governing. What would be missing in both cases is a clear sense of how the presidential candidates would govern if elected.

Preparing to Govern

Strikingly underplayed in the conduct and coverage of presidential campaigns is the host of questions about governing that become absolutely central the day after the election—to the president-elect and his key advisers, to the new Congress, to the pool of candidates for high-level political appointments, and to the same journalists who largely avoid those questions during the campaign—not to mention to the citizens waiting to see how the election now concluded will influence their lives.

We do not intend to emphasize process over substance or to suggest that universal principles of governance apply

your administration, given many Americans' reticence about public service?

▶ What will you propose to reverse the increasing delays in nominating and confirming high-level presidential appointees?

Candidates for the presidency do not talk about how they will prepare to govern, fearing it presumptuous to plan for a transition before being elected. This reluctance to plan has increasingly slowed the start of new administrations, who waste precious weeks between the election and the inauguration because of a lack of forethought about shaping the new White House and presidential team. Transition planning is not presumptuous. Indeed, candidates who fail to make concrete preelection provisions for governing are lacking in seriousness of purpose.

The task of staffing a new administration is staggering: more than 6,000 presidential appointments, including roughly 600 Senate-confirmed cabinet and subcabinet members, 600 noncareer members of the Senior Executive Service, another 1,500 Schedule C personal and confidential assistants, hundreds of federal judges, and several thousand members of advi-

concrete preelection provisions for governing are lacking seriousness of purpose.

equally to all newly elected presidents. Presidencies are shaped by the personal qualities and policy agendas of presidents as well as by the broader political, economic, social, and security context in which they operate. But variations in strategies of governance are no excuse for an absence of forethought about which strategies are most appropriate and offer some reasonable chance of success. These considerations deserve a full airing during the campaign.

We provide here a series of questions about governance that should be raised during the upcoming campaign—by candidates with their opponents, by citizens in town meetings, by debate sponsors in planning major televised events, and by journalists in interviews and background stories—all done in a way that serves the interests of candidates, citizens, and the media, and most important, the interests of governing in America.

1. Questions about the transition

- ▶ What concrete steps will you take before the election to prepare for a successful transition?
- ▶ How will your transition expedite appointments to your White House staff, cabinet, and subcabinet? What will you do to get people in office and serving on day one of your administration?
- ▶ What kinds of people will you recruit to each level of your administration? How will you convince quality people to join

sory boards and commissions. The average tenure of presidential political appointees has been steadily declining and is now barely 14 months. If appointments are not made well before the inauguration, they can be delayed for months into the presidency, creating uncertainty in agencies and gaps in policymaking. A strategy, process, and early start are essential for smooth and responsive policymaking and administration.

2. Questions about agenda

- ▶ What are your specific plans for the first 100 days of your administration?
- ▶ How will you meet the requirement for submitting a budget for the new fiscal year early in your administration?
- ▶ What legislative proposals will you put before Congress first?
- ▶ What do you consider the greatest risk in launching a new administration—trying to accomplish too little or too much?

A smooth, quick start is key to a successful presidency. Of course, each new administration faces a unique set of political and policy possibilities that emerge from the particular campaign and election results. But presidents-elect have not always thought through the contingencies and related them to an initial strategy for governing, in part because they are seldom asked about these matters before Election Day. And

that has occasionally led them to miscalculate what can be accomplished early in their administrations and how best to proceed.

3. Questions about relations with Congress

■ In recent years Congress has become more partisan and ideologically polarized, with narrow majorities that make party government problematic and with fewer centrists available to help build bipartisan coalitions. How do you intend to work with this new Congress?

■ How will your approach vary depending on whether your party has a narrow majority or is in the minority in one or both houses of Congress?

■ The filibuster in the Senate is now routine, setting the bar at 60, not 50 votes for most key issues. How will you attract the necessary supermajorities in that chamber, especially on controversial policies such as managing the budget surplus, adjusting or restructuring Social Security and Medicare, increasing access to health insurance, and altering the federal role in education?

Most plausible scenarios for the 2000 elections would leave both houses of Congress with narrow majorities, even if the presidential outcome is lopsided, which seems unlikely. The new president may well lead a unified party government, but an exclusive reliance on partisan majorities is likely to founder in the face of the multiple veto points in the U.S. political system. Yet building bipartisan majorities in Congress is much more difficult now that the center of gravity in each party has shifted to its ideological pole. And members of Congress are more likely to hear from activists and donors who reinforce the ideological polarization of the parties. Grappling with these forces is one of the biggest challenges facing the new president.

4. Questions about governing in the era of the permanent campaign

■ In the words of political scientist Hugh Heclo, “Not just presidents but everyone with an active interest in what happens in Washington now engages in continuous efforts to orchestrate, amplify, and inject the presumptive voices of the American people...into the formulation and management of national policy.” Policymaking occurs in a context of “permanent, professionally-managed, and adversarial campaigning to win the support of those publics upon whom the survival of the political client depends.” How will this permanent campaign affect your strategies of governance?

We have entered an era in which politicians must campaign to govern and govern by campaigning. It will do no good to try to obliterate the elements of our politics, communications, and culture that contribute to this phenomenon. Some reforms may help, but they will not perform miracles. Potential presidents as well as journalists and citizens need to think through and talk through the implications of this permanent campaign and explore how it can be exploited or adapted to serve broader public purposes. Successful presidents must

adapt their policies and strategies to the environment of the permanent campaign.

5. Questions about foreign policy decisionmaking

■ With the end of the Cold War and the globalization of the economy, U.S. foreign policymaking has become more, not less contentious. While signs of neoisolationism are often overstated, public apathy and sharp disagreement among policy elites have contributed to very rocky relations between the president and Congress. What steps would you take to build domestic political support for your foreign policy leadership?

The assumption of bipartisan support for foreign policy is no longer operative in the post-Cold War era. Foreign policy increasingly has come to resemble domestic policy in its political dynamics. Beyond an ambiguous and unenthusiastic internationalism, little agreement exists on the appropriate ends and means of American foreign policy. Deep-seated differences, often cutting across the usual ideological and partisan boundaries, exist on a wide range of international matters, including the role of multilateral institutions, the place of labor and environmental standards in trade negotiations, the conditions justifying humanitarian military intervention, the centrality of human rights in dealings with China, and the nature of our economic and political engagement with Russia. The temptation, in a permanent campaign mode, is for candidates to exploit these differences for ideological or partisan advantage, without regard for the consequences for managing an effective foreign policy.

6. Questions about reform

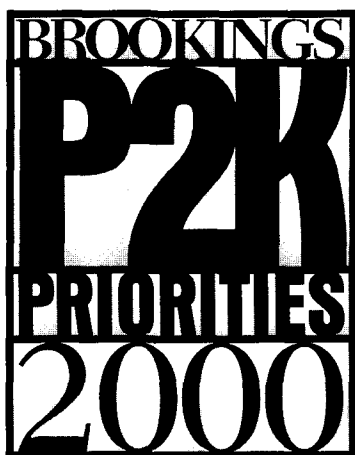
■ What structural changes—if any—would you seek in our political institutions and processes to improve governance and to help achieve your policy ambitions for the country?

There is no panacea here, but the possible areas for constructive structural change are legion: pre-election transition planning, the number of political appointees and the structure of executive management, early orientation and training for political appointees, the speed, breadth, and nature of security clearances for top officials, the rules for hiring and firing civil servants, campaign finance laws, ethics and financial disclosure requirements, the budget process, the national security policy apparatus, and the application of fast-track provisions in Congress to additional policy arenas.

What's Possible?

Whether these questions can be insinuated into the 2000 campaign dialogue depends on our creativity in designing interesting and entertaining formats and in demonstrating that the interests of candidates, citizens, and the media are served in so doing. The permanent campaign will not disappear anytime soon, but constructive steps can and should be taken during the 2000 election campaign to improve the climate for governing in the new millennium. ■

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202-797-6105

Fax
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The 2000 Election and Beyond

Henry J. Aaron and Robert D. Reischauer, eds.

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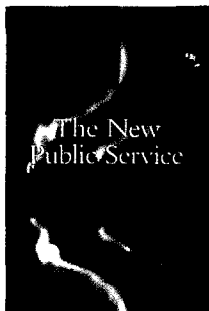
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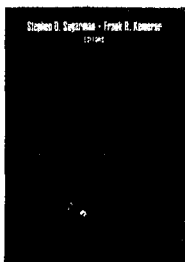
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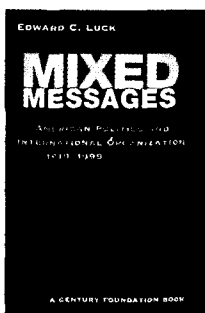
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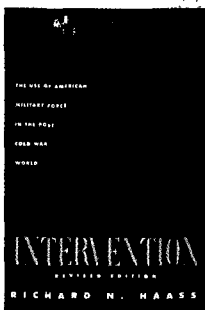
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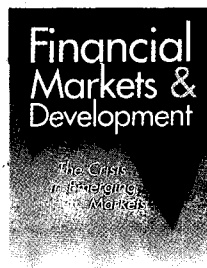
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